

(8)
No. 87-1167

Supreme Court, U.S.
FILED
JUN 30 1988
JOSEPH S. SPANIOLO, JR.
CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1987

PRICE WATERHOUSE, PETITIONER

v.

ANN B. HOPKINS, RESPONDENT

On Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JANUARY 12, 1988
CERTIORARI GRANTED MARCH 7, 1988

84 (20)

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* The opinions of the lower courts were printed in the petition for
a writ of certiorari and have not been reproduced here.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 84-3040

ANN B. HOPKINS, PLAINTIFF,

v.

PRICE WATERHOUSE, DEFENDANT.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1984		
Sep 28	1	COMPLAINT, appearance, jury demand. (ew)
Sep 28	2	FIRST set of interrogatories by pltffs. to deft. (ew)
Sep 28	3	FIRST request by pltffs to deft. for production of documents. (ew)
Oct 22	4	ANSWER by deft. to the complaint. (ew)
		* * * * *
Oct 30		SCHEDULING CONFERENCE: Pretrial set for 3/4/85 at 9:00 a.m.; trial set for 3/25/85 at 9:30 a.m. (Rep: S. Zizzo) GESELL, J. (ew)
		* * * * *
Nov 19	6	ORDER filed 11-14-84 that the stipulation and protective order submitted to the court by counsel is not acceptable and the court's approval is withheld; the terms thereof are too cumbersome, will delay progress of discovery, and no showing of necessity has been made; a limited simpler stipulation may be presented for consideration. (N) GESELL, J. (io)

DATE	NR.	PROCEEDINGS
1984		
Nov 27	7	PRETRIAL ORDER setting final pretrial in Courtroom 6 at 9:00 on 3/4/85; setting forth instructions to trial counsel; directing all discovery must be completed by 2/20/85; commencing trial on 3/25/85 at 9:30 a.m. (N) GESELL, J.
Dec 6	8	RESPONSES by defts. to pltffs first request for production of documents. (ew)
Dec 6	9	RESPONSES by defts. to pltffs first set of interrogatories; Exhibits A-D. (ew)
Dec 11	10	STIPULATION and Protection order that the following limitations shall apply to those documents of Price Waterhouse which relate to its present or former employees and partners and which the parties stipulate to be "protected documents" all such documents will be marked on the first page with the "PROTECTED DOCUMENTS." (N) GESELL, J. (ew)
Dec 18	11	FIRST request by pltffs. for admissions to deft. (ew)
1985		
Jan 15	12	RESPONSES by defts. to pltffs first requests for admissions. (ew)
Jan 22	13	FIRST request by defts. to pltff. for production of documents. (ew)
Jan 22	14	FIRST interrogatories by defts. to pltff. (ew)
Jan 26	15	SUPPLEMENTAL discovery requests by pltffs. (ew)

* * * * *

DATE	NR.	PROCEEDINGS
1985		
Feb 14	17	STIPULATION AND ORDER for dismissal without prejudice to pltf's right to pursue District of Columbia Human Rights Act Claims in the Superior Court of the District of Columbia. The aforementioned claims constitute Count Two of the current Complaint; so ordered. "This Court expresses no view as to whether or not the Superior Court may entertain Count Two.: (fiat) (N) GESELL, J. (mf)
Feb 22	18	ORDER filed 2/19/85 granting joint motion extending deadline for conducting all discovery to and including 3/12/85; rescheduling pretrial conference to 3/14/85 at 9:00 a.m.; directing that trial shall begin on 3/25/85 at 9:30 a.m. The Court has no time available for this case in early April. Suggest video deposition for absent witness. (N) GESELL, J (mf)
Feb 28	19	RESPONSE by pltffs. to defts. first request for production of documents. (ew)
Feb 28	20	ANSWERS by pltffs. to defts interrogatories. (ew)
Mar 5	21	RESPONSES by defts. to pltffs supplemental discovery requests; Exhibits. (ew)
Mar 14	22	LIST OF WITNESSES by deft. (ef)
Mar 14	23	LIST OF TRIAL EXHIBITS by deft. (ef)
Mar 14	24	TRIAL BRIEF by deft. (ef)
Mar 14	25	PRETRIAL Package by pltf'; Witness List; Exhibit List; Trial Brief; Proposed Findings of Fact 1. (ef)
Mar 14		PRETRIAL conference held. Rep: S. Zizzo GESELL, J. (ef)

DATE	NR.	PROCEEDINGS
1985		
Mar 22	26	DEPOSITION OF Lewis J. Krulwich taken on behalf of pltff on 3/8/85. (ew)
Mar 22	27	DEPOSITION OF Donald Eplebaum taken on behalf of pltff on 3/8/85. (ew)
Mar 22	28	DEPOSITION OF Ann B. Hopkins taken on behalf of deft on 3/8/85; Vol. II. (ew)
Mar 22	29	DEPOSITION OF Ann B. Hopkins taken on behalf of deft on 2/22/85. (ew)
Mar 22	30	DEPOSITION OF Donald R. Ziegler taken on behalf of pltff on 3/1/85. (ew)
Mar 22	31	DEPOSITION OF Benten B. Warder taken on behalf of pltff. on 2/12/85. (ew)
Mar 22	32	DEPOSITION OF Thomas O. Beyer taken on behalf of pltff on 2/7/85. Vol. II. (ew)
Mar 22	33	DEPOSITION OF Thomas O. Beyer taken on behalf of pltff on 2/6/85. Vol. I. (ew)
Mar 22	34	EXAMINATION BEFORE TRIAL of deft. Joseph E. Connor on 3/12/85. (ew)
Mar 22	35	EXAMINATION BEFORE TRIAL of deft Paul Goodstat on 3/12/85. (ew)
Mar 22	36	EXAMINATION BEFORE TRIAL of Joseph E. Connor on 3/12/85. (2 video tapes) (ew)
Mar 25		TRIAL by Court begun; respite until 9:30 a.m. on 3/26/85. (Rep: S. Zizzo) GESELL, J. (mf)
Mar 26		TRIAL by court resumes; respite until 3/27/85 at 9:30 a.m. (rep: S. Zizzo) GESELL, J. (ew)
Mar 27		TRIAL BY COURT resumes; respite until 9:30 a.m. on 3/28/85. (Rep: S. Zizzo) GESELL, J. (ew)

DATE	NR.	PROCEEDINGS
1985		
Mar 28		TRIAL BY COURT resumes and respite until 3/29/85 at 9:30 a.m. (Rep: S. Zizzo) GESELL, J. (ew)
Apr 9	37	JOINT motion by pltff. and deft. to correct Connor testimony transcript. (ew)
Apr 10	38	ORDER granting joint motion to correct Connor Testimony transcript; the Clerk will make the original of the typed transcript of the 3/12/85 deposition of Joseph E. Connor filed in this case available to a properly identified atty or employee of the firm of Gibson, Dunn & Crutcher, within the Clerk's office and will allow that person to make ink corrections that have been agreed to by both parties on the original transcript. (N) GESELL, J. (ew)
Apr 12	39	TRANSCRIPT OF PROCEEDINGS of March 25, 1985; courts copy; pages 1-178; Rep: S. Zizzo. (ew)
Apr 12	40	TRANSCRIPT OF PROCEEDINGS of March 26, 1985; courts copy; pages 179-300; Rep: S. Zizzo. (ew)
Apr 12	41	TRANSCRIPT OF PROCEEDINGS of March 27, 1985; courts copy; pages 301-448A; Rep: S. Zizzo. (ew)
Apr 12	42	TRANSCRIPT OF PROCEEDINGS of March 28, 1985; courts copy; pages 449-663; Rep: S. Zizzo. (ew)
Apr 12	43	TRANSCRIPT OF PROCEEDINGS of March 29, 1985; courts copy; pages 664-730; Rep: S. Zizzo. (ew)
May 3	44	PROPOSED FINDINGS OF FACT by deft.; Index. (mf)

DATE	NR.	PROCEEDINGS
1985		
May 10	45	POST-TRIAL brief by pltffs. (ew)
May 10	46	POST-TRIAL brief by defts. (ew)
May 17	47	ORDER filed 5-15-85 directing each party to provide, in writing, which of the other's proposed findings it will not challenge, and to file copies with the Court no later than 4:30 p.m. on 5-24-85. (N) GESELL, J. (gh)
May 24	48	RESPONSE by defts. to pltffs proposed findings of fact. (ew)
May 24	49	REPLY by defts. to pltffs post-trial brief. (ew)
May 24	51	REPLY brief by pltffs. (ew)
May 29		CLOSING ARGUMENTS begun, concluded and taken under advisement. (Rep: Santa Zizzo). GESELL, J. (dc)
Jul 9	52	TRANSCRIPT OF PROCEEDINGS of 5/29/85; courts copy; pages 1-64; Rep: S. Zizzo. (ew)
Sept 20	53	MEMORANDUM. (N)
Sept 20	54	ORDER dismissing the Complaint; awarding pltf. her reasonable attorney's fees plus cost to be set by the clerk; directing that the parties shall attempt to agree on an amount to compensate for such reasonable attorney's fees and advise the Court in writing on or before 9/30/85, whether further proceedings to establish the fee award will be necessary. (N) GESELL, J. (br)
* * * * *		
Oct 18	57	NOTICE OF APPEAL by pltf. from order filed 9/20/85. \$5.00 filing fee and \$65.00 docketing fee paid and credited to U.S. Copy mailed to Stephen E. Tallent. (br)

DATE	NR.	PROCEEDINGS
1985		
Oct 18		PRELIMINARY RECORD transmitted to USCA; USCA# 85-6052.
Oct 25	58	NOTICE OF APPEAL by deft. from order filed 9/20/85 \$5.00 filing fee and \$65.00 docketing fee paid and credited to U.S. Copy mailed to Douglas B. Huron. (br)
Oct 28		PRELIMINARY RECORD transmitted to USCA; USCA# 85-6097.
* * * * *		
Dec. 09	62	ORDER filed 12-6-85 staying matter pending final decision on appeal. (N) USCA/N RECEIPT ACKNOWLEDGED. GESELL, J. (la)
* * * * *		
1986		
Sep. 09		RECORD ON APPEAL delivered to USCA. RECEIPT ACKNOWLEDGED 9-10-86. (1a)
Sep. 18	64	MOTION by deft. Price Waterhouse to have certain trial exhibits made part of the record on appeal. USCA/N (la) (EXHIBITS—in box)
Sep. 19		SUPPLEMENTAL RECORD ON APPEAL. RECEIPT ACKNOWLEDGED. (la) (Motion re: exhibits)
Sep. 24	65	CERTIFIED copy of Order from USCA dated 9-24-86, sua sponte, directing the parties to file with the Clerk of USDC the following exhibits: Defendant's exhibits #27; 30; 31; 63 & 68; Plaintiff's exhibits #20 & #21. (USCA#85-6052) (USCA#85-6097) (la)
Sep. 25	65	TRIAL EXHIBITS of Deft. #27; 30; 31; 63; 68 pursuant to Order from USCA. (USCA #85-6052 & 85-6097 (la) (#31 in black notebook binder; #68 in binder)

DATE	NR.	PROCEEDINGS
1986		
Sep. 25	65	SUPPLEMENTAL RECORD ON APPEAL of defts. trial exhibits #27; 30; 31; 63 & 68 delivered to USCA. (USCA#85-6052 & 85-6097) (la)
Sep. 29	66	NOTICE OF FILING by pltf., Trial exhibits #20 & #21. (la)
Sep. 29	67	RESPONSE by pltf. to motion to include certain exhibits in record on appeal, attachment. (EXHIBIT—exh. #12-15, 22-25) (la)
Oct. 02	68	ORDER directing pltf's exhibits Nos. 12, 13, 14, 15, 22, 23, 24, 25 and deft's exhibits Nos. 11, 13, 14, 17, 37, 53, 57, 64 & 76 be made part of the record on appeal in the consolidated cross-appeals in this action before the USCA for D.C. Circuit in Nos. 85-6052 & 85-6097. (N) GESELL, J. (la)
Oct. 02	68	TRIAL EXHIBITS of pltf., Nos. 12, 13, 14, 15, 22, 23, 24 & 25. (la)
Oct. 02	69	TRIAL EXHIBITS of deft., Nos. 11, 13, 14, 17, 37, 53, 57, 64 (IN (3) Black Binders and #76. (la)
Oct. 02		SUPPLEMENTAL RECORD ON APPEAL delivered to USCA consisting of Trial Exhibits of pltf. & deft. RECEIPT ACKNOWLEDGED. 10-2-86 (la)
1987		
Oct. 19	70	CERTIFIED copy of judgment from USCA dated 8-4-87 AFFIRMING in part, REVERSING in part judgment of USDC and REMANDING cases to USDC in accordance with the opinion. OPINION. (USCA#85-6052 & 85-6097) (la)

DATE	NR.	PROCEEDINGS
1987		
Oct. 29		STATUS CONFERENCE ON REMAND: Oral motion of deft. to stay case pending certiorari to the Supreme Court heard 10/27/87 and denied; deft. indicated he will try to have the mandate stayed in the USCA. Rep: S. Zizzo. GESELL, J. (gd)
Nov. 06	71	CERTIFIED copy of Order from USCA dated 11-5-87 Granting appellee/cross-appellant's motion for recall of mandate issued 10-16-87; Further Ordered Partially Granting the motion for stay of mandate & the Clerk is directed to delay reissuance of the mandate through 11-30-87. No further stay of issuance of the mandate will be granted. (USCA#85-6052 & 85-6097) CD/N Becki/N Mandate Returned. RECEIPT ACKNOWLEDGED 11-16-87. (la)
		* * * * *
Nov. 27		SUPPLEMENTAL RECORD ON APPEAL delivered to USCA. (#72; #73 & #74) RECEIPT ACKNOWLEDGED 11-18-87. (la)
Dec. 08	75	CERTIFIED copy of Judgment from USCA dated 8-4-87 Affirming In Part and REVERSING In Part the Judgment of USDC and REMANDING these cases to USDC in accordance with the Opinion. OPINION. (USCA#85-6052 & 85-6097) (la)
		* * * * *

DATE	NR.	PROCEEDINGS
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1988

Mar. 08 80 TRANSMITTAL LETTER FROM USCA returning original record (2) volumes; (6) transcripts; (11) depositions. SUPPLEMENTAL RECORD of 9-25-86 & 9-26-86 & 10-7-86. (USCA# 85-6052 & 85-6097) (la)

* * * * *

Mar 22 82 STIPULATION filed 3/21/88 and request for order staying proceedings, granted. So Ordered. (flat) (N) GESELL, J. (gd)

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

No. 85-6052

ANN B. HOPKINS, APPELLANT

v.

PRICE WATERHOUSE

Appeal from the United States District Court
for the District of Columbia
(Civil Action No. 84-3040)

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
(B) 10-31-85	Copy of notice of appeal and docket entries from Clerk, DC (n-2)
(B) 10-31-85	Docketing fee was paid in the District Court on 10-18-85
(B) 10-31-85	Docketing statement was mailed to counsel for appellant
(E) 11-15-85	4-Appellant's docketing statement (m-15) [#15, #23]
(E) 11-19-85	4-Appellant's docketing statement (m-18) [#15, #23]

DATE	FILINGS—PROCEEDINGS
(E) 12-17-85	Clerk's order, <i>sua sponte</i> , that Nos. 85-6052 and 85-6097 are consolidated as cross-appeals, and a briefing schedule is set as follows: Appellant's (Hopkins) brief and appendix or record excerpts—Feb. 10, 1986; Appellee/cross-appellant's (Price Waterhouse) brief—Mar. 21, 1986; Cross-appellee/appellant's brief—April 21, 1986; and Cross-appellant's reply brief, if any—May 5, 1986.
(T) 02-10-86	15-APPELLANT/CROSS-APPELLEE'S BRIEF (p-10) [Bin 31-4]
(T) 02-10-86	7-RECORD EXCERPTS (p-10)
(T) 03-21-86	15-APPELLEE/CROSS-APPELLANT'S BRIEF (p-21)
(T) 03-21-86	7-RECORD EXCERPTS (p-21)
(T) 04-11-86	15-APPELLEE/CROSS-APPELLANT'S CORRECTED BRIEF (m-11)
(T) 04-21-86	15-APPELLANT/CROSS-APPELLEE'S REPLY BRIEF (p-21)
(E) 05-06-86	15-CROSS-APPELLANT'S REPLY BRIEF (m-5)
(J) 09-11-86	CERTIFIED ORIGINAL RECORD—2 vols.; 6 transcripts under 2 separate covers and 11 depositions
(J) 09-24-86	Clerk's order, <i>sua sponte</i> , that the parties are directed to file with the Clerk of the District Court the following exhibits: Defendant's Exhibits; #27, #30, #31, #63 and #68; Plaintiff's Exhibits; #20 and #21; and that the Clerk of the District Court is directed to certify and transmit the aforementioned exhibits in the above entitled case as a supplemental record on appeal.

DATE	FILINGS—PROCEEDINGS
(C) 09-26-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—defendant's exhibits requested by court order filed 9/24/86
(J) 10-01-86	Clerk's order, <i>sua sponte</i> , that the following times are allotted for oral argument: Appellant/cross-appellee—25 minutes; Appellee/cross-appellant—25 minutes
(J) 10-07-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—trial exhibits
(J) 10-23-86	ARGUED before Edwards, Williams, CJs and Green, U.S. District Court Judge for the District of Columbia. (BIN 58-6)
(D) 08-04-87	Opinion for the Court filed by District Judge Green.
(D) 08-04-87	Dissenting opinion filed by Circuit Judge Williams.
(D) 08-04-87	Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby affirmed in part and reversed in part, and these cases are remanded, in accordance with the Opinion for the Court filed herein this date.
(D) 08-04-87	Mandate order.
* * * * *	
(R) 09-03-87	20-Appellee/cross appellant's petition for rehearing and suggestion for rehearing en banc (m-3) [1]
(R) 09-08-87	20-Appellee/cross appellant's corrected petition for rehearing and suggestion for rehearing en banc (m-8) [1]
(R) 09-10-87	20-Appellant/cross-appellee's motion to disqualify Circuit Judge D.H. Ginsburg (m-1C) [1]

DATE	FILINGS—PROCEEDINGS
(J) 09-30-87	Per Curiam order denying petition for rehearing of appellee/cross-appellant. Edwards, Williams, CJs and Joyce H. Green, District Judge, U.S. District Court for the District of Columbia
(J) 09-30-87	Per Curiam order en banc denying suggestion for rehearing en banc of appellee/cross-appellant. CJ Wald, Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams and D.H. Ginsburg, CJs.
(D) 10-16-87	MANDATE ISSUED. Costs will be determined at a later date.
(R) 11-02-87	6-Appellee/cross appellant's petition for recall of mandate and for stay of mandate (m-2) [1]
(J) 11-05-87	Per Curiam order that the motion for recall of mandate is granted and the mandate of this court issued on October 16, 1987 is recalled. The Clerk of the District Court is directed to return said mandate promptly and that the motion for stay of mandate is partially granted and the Clerk is directed to delay reissuance of the mandate through November 30, 1987. No further stay of issuance of the mandate will be granted. Edwards, Williams, CJs and Joyce H. Green, District Judge, US District Court for the District of Columbia.
(J) 11-16-87	Return of the mandate from the U.S. District Court for the District of Columbia
(J) 11-16-87	Clerk's order that costs are awarded to appellant/cross-appellee in the amount of \$309.25 and that attorneys' fees are awarded to appellant/cross-appellee in the amount of \$20,886.50. The Clerk is directed to include a certified copy of the order in the mandate of the court at such time as it is issued.

DATE	FILINGS — PROCEEDINGS
(J) 11-25-87	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—(request for documents)
(D) 12-08-87	MANDATE RE-ISSUED.
(R) 01-15-88	Notice from Clerk, Supreme Court advising that petition for certiorari was filed in SC #87-1167 on 01-12-88 [1]
(G) 02-11-88	3-TRANSCRIPT OF ORAL ARGUMENT [1]
(R) 03-07-88	Letter from Clerk, Supreme Court advising that petition for writ of certiorari was granted on 03-07-88 in SC #87-1167 [1]
(T) 02-02-88	RECEIPT FROM DISTRICT COURT FOR RECORD

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

—
No. 85-6097

ANN B. HOPKINS
v.

PRICE WATERHOUSE, APPELLANT

—
Appeal from the United States District Court
for the District of Columbia
(Civil Action No. 84-3040)

—
RELEVANT DOCKET ENTRIES

DATE	FILINGS — PROCEEDINGS
(B) 11-22-85	Copy of notice of appeal and docket entries from Clerk, DC (n-2)
(B) 11-22-85	Docketing fee was paid in the District Court on 10-25-85
(B) 11-22-85	Docketing statement was mailed to counsel for appellant
(E) 12-03-85	4-Appellant's docketing statement (m-3) [#15, #23]
(B) 12-10-85	Notice from Clerk, DC with copy of DC order staying decision on attorneys fees

DATE	FILINGS — PROCEEDINGS
(E) 12-17-85	Clerk's order, <i>sua sponte</i> , that Nos. 85-6052 and 85-6097 are consolidated as cross-appeals, and a briefing schedule is set as follows: Appellant's (Hopkins) brief and appendix or record excerpts—Feb. 10, 1986; Appellee/cross-appellant's (Price Waterhouse) brief—Mar. 21, 1986; Cross-appellee/appellant's brief—April 21, 1986; and Cross-appellant's reply brief, if any—May 5, 1986.
(T) 02-10-86	15-APPELLANT/CROSS-APPELLEE'S BRIEF (p-10) [Bin]
(T) 02-10-86	7-RECORD EXCERPTS (p-10)
(T) 03-21-86	15-APPELLEE/CROSS-APPELLANT'S BRIEF (p-21)
(T) 03-21-86	7-RECORD EXCERPTS (p-21)
(T) 04-11-86	15-APPELLANT/CROSS-APPELLANT'S CORRECTED BRIEF (m-11)
(T) 04-21-86	15-APPELLANT/CROSS-APPELLEE'S REPLY BRIEF (p-21)
(E) 05-06-86	15-CROSS-APPELLANT'S REPLY BRIEF (m-5)
(J) 09-11-86	CERTIFIED ORIGINAL RECORD—2 vols.; 6 transcripts under 2 separate covers and 11 depositions
(J) 09-24-86	Clerk's order, <i>sua sponte</i> , that the parties are directed to file with the Clerk of the District Court the following exhibits: Defendant's Exhibits; #27, #30, #31, #63 and #68; Plaintiff's Exhibits; #20 and #21; and that the Clerk of the District Court is directed to certify and transmit the aforementioned exhibits in the above entitled case as a supplemental record on appeal

DATE	FILINGS — PROCEEDINGS
(C) 09-25-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—motion to have certain exhibits made part of the record
(C) 09-26-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—defendant's exhibits requested by court order filed 9/24/86
(J) 10-01-86	Clerk's order, <i>sua sponte</i> , that the following times are allotted for oral argument: Appellant/cross-appellee—25 minutes; Appellee/cross-appellant—25 minutes
(J) 10-07-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD—trial exhibits
(J) 10-23-86	ARGUED before Edwards, Williams, CJs and Green, U.S. District Court Judge for the District of Columbia. (Bin 58-6)
(D) 08-04-87	Opinion for the Court filed by District Judge Green.
(D) 08-04-87	Dissenting opinion filed by Circuit Judge Williams.
(D) 08-04-87	Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby affirmed in part and reversed in part, and these cases are remanded, in accordance with the Opinion for the Court filed herein this date.
(D) 08-04-87	Mandate order.
* * * * *	
(R) 09-03-87	20-Appellee/cross-appellant's petition for rehearing and suggestion for rehearing en banc (m-3 [1])
(R) 09-08-87	20-Appellee/cross appellant's corrected petition for rehearing and suggestion for rehearing en banc (m-8) [1]

DATE	FILINGS — PROCEEDINGS
(R) 09-10-87	20-Appellant/cross-appellee's motion to disqualify Circuit Judge D.H. Ginsburg (m-10) [1]
(D) 10-16-87	MANDATE ISSUED. Costs will be determined at a later date.
(R) 11-02-87	6-Appellee/cross appellant's petition for recall of mandate and for stay of mandate
(J) 11-05-87	Per Curiam order that the motion for recall of mandate is granted and the mandate of this court issued on October 16, 1987 is recalled. The Clerk of the District Court is directed to return said mandate promptly and that the motion for stay of mandate is partially granted and the Clerk is directed to delay reissuance of the mandate through November 30, 1987. No further stay of issuance of the mandate will be granted. Edwards, Williams, CJs and Joyce H. Green, District Judge, U.S. District Court for the District of Columbia
(J) 11-16-87	Return of the mandate from the U.S. District Court for the District of Columbia
(J) 11-16-87	Clerk's order that costs are awarded to appellant/cross-appellee in the amount of \$309.25 and that attorneys' fees are awarded to appellant/cross-appellee in the amount of \$20,886.50. This Clerk is directed to include a certified copy of this order in the mandate of the court at such time as its issue
(J) 11-25-87	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD
(D) 12-08-87	MANDATE RE-ISSUED.

DATE	FILINGS — PROCEEDINGS
(R) 01-15-88	Notice from Clerk, Supreme Court advising that petition for certiorari was filed in SC #87-1167 on 01-12-88 [1]
(G) 02-11-88	3-TRANSCRIPT OF ORAL ARGUMENT [1]
(R) 03-07-88	Letter from Clerk, Supreme Court advising that petition for writ of certiorari was granted on 03-07-88 in SC #87-1167 [1]

TRIAL TESTIMONY OF DR. SUSAN FISKE
3/28/85

[534] **DR. SUSAN FISKE**

appearing on behalf of the plaintiff as a rebuttal witness, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HURON:

Q Would you state your name, please.

A Susan Fiske.

Q And where are you employed?

A Carnegie Mellon University.

Q What is your position at Carnegie Mellon?

A I am an associate professor of psychology.

Q Do you have a copy in front of you of plaintiff's Exhibit No. 37?

A Yes.

Q Is that a resume of your education, experience, publications?

A It is.

Q Could you briefly summarize your educational [535] background and your experience?

A I got my undergraduate degree at Harvard in 1973. I also got my graduate degree there, my Ph.D. in 1978 in social psychology. My employment has been—since I finished my Ph.D. I have been at Carnegie Mellon University first as an assistant professor and then as an associate professor.

Q Looking at the beginning to page 2 of Plaintiff's Exhibit 37, does this set forth your publications?

A Yes.

Q I'd like to ask a few questions about your experience and education in the field of—general field of stereotypes. Can you define first of all—

THE COURT: What did you call the field so I understand it?

MR. HURON: Stereotype. And I am going to ask first whether that is a recognized concept within your discipline.

THE WITNESS: Stereotyping is a concept that has existed in social psychology since the beginning of the existence of the discipline, since the early part of this century and it is one of the central concepts in my discipline.

BY MR. HURON:

Q And could you briefly define what stereotyping is?

A A stereotype is a set of beliefs that are presumed to be true about a person on the basis of categorizing them [536] within any given social category and those beliefs are often negative.

Q Have you had occasion in the recent past to do a survey of the literature in your discipline on the concept of stereotyping?

A Yes, I have in two respects. Stereotyping has been my major area of work in graduate school and since then. And I have published a number of articles in that area as well as having a National Science Foundation Grant on that. I have also recently completed a book in which we reviewed the area of stereotyping as—in a context of looking at social cognition, which is how people understand and make sense of other people, and for that book we reviewed over 1300 references.

Q You mentioned a National Science Foundation Grant. Is that something that you have now?

A Yes, it is.

Q Could you tell us what it is and a little bit about it?

A The title of the grant is affective responses to social stereotypes. It is concerned with people's evaluative and emotional responses to social stereotypes. And it is a grant proposal that was accepted by the National Science Foundation and the National Institutes of Mental Health.

Q I take it you can only choose one?

[537] A That's right. You can't be funded twice.

Q Do you happen to know how many grant proposals—what percentage of grant proposals at the National Science Foundation are accepted?

A Within my division, only 10 percent are funded.

Q Have you conducted, I think you said you have, previous research also in the area of stereotyping?

A Yes, one of the very first things that I ever worked on was in stereotyping. It was a paper that was designed to look at the effects of categorizing a person as male or female or as black or white and it examined the ways that the roles and traits that people attribute to other people are—can be a function of categorizing them according to sex or race.

Q Now, in the course of your academic work or your experience since graduating with your doctorate, have you done any study or any analysis in the general area of methodology, scientific methodology?

A Yes, I think you could fairly say that it was my major in graduate school. I was a teaching assistant in a number of methods in statistics courses, both for graduate students and undergraduate and being an expert in methodology is necessary to getting research published in my field.

Q And have you had any research published?

A Yes, I have published something in the order of over [538] a dozen articles and chapters.

Q In terms of methodology, broadly speaking, how many types of methodology are there in your discipline? Could you define them a little bit?

A Well, broadly speaking there are two kinds of research. One is laboratory experiments in which you can within a very controlled environment manipulate the conditions, the social situation, and measure the impact that that has on people. The other type of research is field research or survey research in which you can be more certain that the effects that you are observing are gen-

eralizable to the general population as a whole but you can't be as certain that the particular phenomena that you say are causing the effects are causing them, so there are trade-offs between laboratory research and survey and field research.

Q Now, how long has stereotyping been a subject of social science research?

A Well, at least since 1922.

Q And has there been one type of research that has predominated; that is, laboratory versus field work?

A No, actually stereotyping is an interesting concept because it has been researched both in the lab and in the field and the evidence from the lab and the field are quite convergent.

THE COURT: Convergent?

[539] THE WITNESS: Converging.

THE COURT: You mean concurrent.

THE WITNESS: Well, what I am trying to say is they meant the same things.

THE COURT: That is what I meant. They come out the same way.

THE WITNESS: Yes.

BY MR. HURON:

Q Dr. Fiske, have you ever sought to qualify as an expert witness in any court proceeding before?

A No.

MR. HURON: Your Honor, I'd like to at this point submit Dr. Fiske's qualifications as an expert in the field of stereotype.

MR. TALLENT: Your Honor, I have grave doubts as to whether this is proper rebuttal, as to whether Dr.—this issue, it seems to me, was raised initially by the Plaintiffs in their case which should have been part of their case in chief. It is not proper rebuttal.

THE COURT: I know you have made that position clear before. It has seemed to me that if one assumes, as I do at this stage, that a *prima facie* case was shown,

though you have a motion to the contrary, and that then what has happened is that you have come forward with an explanation and that the question now before me is the burden of the [540] plaintiff to show that your explanation is pretextural, it would seem to me entirely appropriate at this stage to examine your defense in the light of the expert testimony of this witness.

MR. TALLENT: I have no objection to the expertise of this witness, Your Honor.

THE COURT: I can't hear you.

MR. TALLENT: I have no objection to the expertise of the witness.

THE COURT: Well, I assume not.

MR. TALLENT: Although I do not waive any arguments with respect to the relevance of her testimony.

THE COURT: I understand that. That is partly a legal and partly a factual question we will have to iron out as we go along but we will take the testimony.

MR. HURON: At this point I'd like to move in plaintiff's Exhibit 37, Dr. Fiske's resume.

THE COURT: Yes. It will be received and it saves a lot of time.

(Whereupon, Plaintiff's Exhibit 37 was received into evidence.)

BY MR. HURON:

Q Dr. Fiske, has there been any studies in the literature in your field on the question of stereotyping based on sex in the organizational context?

[541] A Yes, there is quite a lot of research on that. There is research, just to name a few, there is research by Professor Cantor at Yale, Professor Heilman at New York University. Professor Taylor at UCLA.

Q Now, is that laboratory research or is it field research or both?

A Both.

Q Can you briefly describe which is which and what was done?

A Well, Professor Cantor, for example, did a multi-year intensive case study of a large industrial supply organization and wrote a book about it documenting stereotyping within that organization by interviews and questionnaires and so on.

Q That is field work?

A That is field work. Professor Heilman and Professor Taylor, for example, do laboratory research in which they call subjects into the laboratory and they can manipulate the particular antecedent conditions and measure the indicators more carefully.

Q Now, you testified previously it's a general proposition that research on stereotyping tends to, I think your term was, to be convergent. Is that true of the specific research you just identified?

A Yes, it is dramatically true of that research, in [542] fact.

Q Has the research disclosed whether there are any antecedent conditions which are generally associated with stereotyping?

A Yes, it has, and this is particularly a place where the laboratory research and the field research are very much in agreement. One of the major antecedents for stereotyping, for judgments based on stereotypes is a situation I would call rarity within a particular level of an organization. If a person who is a member of a social group is dramatically underrepresented, they are very likely to be perceived, stereotypically, say, 15 to 22 percent.

THE COURT: You are not telling me anything. You have got to talk to a layman, ma'am. You have got to talk to a layman. You are not talking to one of your colleagues and so I have got to understand what you are saying, you understand.

THE WITNESS: Can I try again on that one?

THE COURT: You sure can. You go right ahead and try again.

THE WITNESS: What I'd like to do is talk about some of the factors in a particular organization and particular setting that would tend to encourage stereotyping, and one of the factors is that if there are very, very few people, say very, very few blacks or very, very few women or very, very [543] few men within a particular level of an organization those people are very much likely to be thought about in terms of their category, in terms of their race or in terms of their sex.

BY MR. HURON:

Q Now, what does that mean, say, for women, if there are few women and so a lot of people in the organization think of Miss Jones as a woman as opposed to a manager, what does that mean?

A Well, to the extent that stereotypes are negative expectations that are held about people as a result of categorizing them, if you categorize a person as a woman rather than a manager, to the extent that the stereotype doesn't fit what people want in a manager or to the extent that the expectations about the person overwhelm information about the person per se, then it is going to be stereotypic and detrimental.

Q Is there in the literature a general document on stereotyping, say, a woman, does research indicate that such a thing exists?

A There is. There are general stereotypes of what people particularly expect men to be like and typically expect women to be like. People typically expect women to be strong on the social dimensions. Women are generally expected to be more tender and understanding and concerned about their people, and soft.

[544] THE COURT: You say that of people who have dealt with women expect that? People who have dealt with women in the business context expect that or are you talking about people out on the farm?

THE WITNESS: Well, I would—

THE COURT: I mean we have got to talk about people dealing with people in a business context. Does that lady have an opinion that she is going to offer in this case?

MR. HURON: Yes, sir.

THE COURT: Why doesn't she give me her opinion? And then tell me what she bases it on.

MR. HURON: Fine. We were trying to—

THE COURT: And if we did that then I think I would have a better understanding of where you are getting.

BY MR. HURON:

Q Dr. Fiske, have you examined whether stereotyping was occurring at Price Waterhouse; I am talking about sex role stereotyping, at the time and in connection with Ann Hopkins' proposal for partnership which began in August '82 until she was placed on hold in March of 1983?

A I have examined evidence relative to that.

Q Have you formed an opinion as to whether or not stereotyping was occurring?

A Yes, I have.

Q And what is your opinion?

[545] A I am confident that stereotyping played a role in the decision about Ann Hopkins.

THE COURT: Well, now, what kind of role and how confident? Are you able to say that you are confident within a reasonable degree of certainty in your discipline?

THE WITNESS: Yes, I would say so, given—

THE COURT: All right. That is what I want to know. And then you said it played some part. What part? I don't know how you would express it in your discipline percentage-wise or how you would express it, but minor, major, middle? I don't know what the terminology is.

THE WITNESS: Well, in lay language I would say it played a major determining role.

THE COURT: A major determining role, with reasonable certainty?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. HURON:

Q Dr. Fiske, I think probably what it would make sense to do here is to just go directly into the basis for your opinion, looking first at—summarizing briefly, what the antecedent conditions are and then what the indicators are in this case.

A Okay.

Q So I think a few minutes ago we were talking about [546] the antecedent conditions and you mentioned one was rarity, is that right?

A Yes, if a person is a part of an unusual category they are more likely to be perceived in terms of that category.

Q And what about in this case, is there evidence in this case that speaks to that particular issue?

A Yes, I think there is very striking evidence in this particular case, given that Ann Hopkins was one of 88 people being proposed for partner at that time. She was the only woman, which makes it extremely likely that she would be perceived in terms of her gender and, secondly, the very, very small number of female partners at Price Waterhouse, I believe it is 7 out of 662, that would—those factors would tend to make being female extremely salient in that setting.

Q Now, Dr. Fiske, when you say it is likely that Miss Hopkins would be perceived as a woman, do you mean by everybody in the organization?

THE COURT: Well, I would have thought she would have been. There is a picture of her sent to every partner. They knew she was a woman. There wasn't any question of her sex. They knew she was a woman. Of course she was perceived as a woman.

THE WITNESS: Could I clarify it?

[547] THE COURT: Yes. I am trying to get at what you were saying. I am sure she was perceived as a woman. I take it what you are saying is because she was in a minority, an extreme minority from your point of view, that this group of men out there perceived her in a certain way and stereotyped her. How? I mean how did they stereotype her? Is that what you are trying to tell me?

THE WITNESS: Well, I am trying to say—yes, that is essentially what I am trying to say.

THE COURT: Well, how did it affect her chances? That is what we are talking about.

THE WITNESS: Well, to explain this it is helpful, if I could, to take just a moment to—if I could take just a moment to summarize very briefly what the typical stereotype for men and for women is, knowing nothing else about a person, and as you were saying out on the farm what do people think and obviously it is more complicated than that.

THE COURT: I am sure it is.

THE WITNESS: But if you take as background that the overall typical stereotype for feminine behavior is to be socially concerned and understanding, soft and tender and the overall typical stereotype for a man, all other things being equal, is that they will be competitive, ambitious, aggressive, independent and active, what that means is—now, that is—you can get people to—the research shows [548] that if you ask people what are men typically like, what are women typically like for the past 40 or 50 years they have recorded those kinds of traits. Now, what that means is that when a person, male or female, behaves in ways that are incongruent with that typical expectation that is very salient to people.

And so if a woman behaves in a way that is, in quotes, masculine, if she behaves in a competitive, ambitious, aggressive, independent and active way, that the research shows that she is often likely to be perceived as being,

especially on the social dimension, as being unfeminine on the social dimension as being not especially understanding, not especially concerned with other people and so on.

THE COURT: Are you saying that there is research that shows that that type of stereotyping occurs in a business in today's business context?

THE WITNESS: Yes.

BY MR. HURON:

Q Could you mention some of the research, Doctor?

THE COURT: In other words, that in organizations you are saying like IBM, like Price Waterhouse, like General Foods or just to name some of the large corporations, that that exists and that men doing business with women expect women to be tender and suppliant and meek and courteous and sweet in those companies? I just—I find it difficult to [549] believe and therefore I want to know is there any research, because it is a new idea to me.

THE WITNESS: Well, what the research shows—Professor Cantor's research is a particularly good example of this. What her research shows is that given this overall generalized expectation that, what she calls solo or token women in an organization, in other words women who are rare within their level in an organization are especially likely to be perceived in female stereotypical roles.

For example, they are especially likely to be perceived as motherly or as sort of harmless mascots but a woman who behaves in a stereotypic way is very likely to be perceived in what Professor Cantor calls an iron maiden role, what you may think of as a shrew. Someone who is hard, unemotional, difficult to get along with. Not a regular human being.

THE COURT: Then you are viewing this as a token case, somebody put a woman in just because they want a woman, as they put a black or a homosexual or any of these different groups. Just put them in there so you would recognize them.

THE WITNESS: I don't actually mean to imply that when I say token, the terminology in my field is to call somebody who is rare or unusual a token, but obviously that implies that they are there for token reasons.

THE COURT: Well, token has a very bad connotation [550] in the field that I am working in, has an extraordinarily bad connotation. Are you suggesting that that is what this is, a token case?

THE WITNESS: No, absolutely not. No. It would probably be better to use rarities as a term or somebody who is a solo or close to a solo, has close to solo status within an organization.

BY MR. HURON:

Q Now, Dr. Fiske, to follow up a little bit, when you suggest or say that stereotyping may occur under certain situations are you saying that everyone in the organization is going to buy off on that stereotype?

A No, I am not saying that.

Q Okay.

A What I am suggesting is that there are certain antecedent conditions that should alert one to the possibility of stereotyping. And that when there are very, very few members of a particular group in an organization they're very vulnerable to being stereotyped and in this particular case when I started to look at the evidence related to it one of the other things that I was alerted to was the fact that criteria on which people are evaluated are very ambiguous and the information to which those criteria are matched are always quite ambiguous, the more ambiguous the criteria and the more ambiguous information the more room there is for selective [551] perception and I am an expert in selective perception.

Q Now, let's go through that, back up and go through it in terms of—a few steps in terms of the actual evidence. When you say there is ambiguity of criteria in this case, what is it you are referring to?

A Well, having looked at the long and short form instructions and at the partnership criteria that are outlined and also at Paul Goodstat's speech about partnership, some of the criteria, some of the task-related criteria are not ambiguous, they talk about the amount of money one brings into the organization for example. That is a very objective criterion. If you talk on the other hand about people's personality traits or, quote, having an excellent reputation or, quote outstanding attributes, or comparing someone, as it says on the long and short form instructions, to, quote, comparable individuals, I would submit that those are rather vague criteria.

Q Are you saying, Dr. Fiske, that there is something wrong with using criteria like that in making a decision?

A There is nothing wrong with using subjective criteria. I just think you have to be extremely careful in the use of them. Because there is room for misperception.

Q Now, what about—you mentioned also another antecedent condition. I believe it was ambiguity of information. Is there evidence in this case that that type of [552] ambiguity exists?

A Yes, I think so. A lot of the comments are based on the briefest of encounters with the candidate.

THE COURT: Well, let me put this to you and see if I can understand—I am trying to understand this. I take it a person who is stereo—subject to this stereotype flaw doesn't know it himself. It isn't conscious.

THE WITNESS: You mean the stereotyper?

THE COURT: The person stereotyped, the male.

THE WITNESS: Okay, the person who is stereotyping?

THE COURT: I don't know what you call it, but the person that you say is the stereotype, he doesn't intentionally know he is, does he?

THE WITNESS: It seems unlikely to me in this day and age given the amount of general knowledge there is about affirmative action and equal employment opportunity and so on, it would seem unlikely to me that a person could be totally unaware of what they were doing.

THE COURT: All right. And if that male who has voted, you know, in a partnership was aware that he was reacting to stereotype your view would be that he ought to disclose that or ought to be uncovered before his vote was counted?

THE WITNESS: Yes, and I also think it is possible for somebody to have a stereotype and to be thinking [553] stereotypically but say wait a minute, I'd better not act on this.

THE COURT: Well, now, take a partner who is supervising the plaintiff. And she asks for his advice and he gives it to her. And she comes back, having not reacted very strongly to counsel with respect to how she should conduct herself. She tells him that his advice was stupid. And she busts into his room without knocking when the door is closed, frequently. How does that man know what it is that is reacting to him? It isn't abnormal to react adversely to that. Well, you are stupid. To the partner. You are stupid. You gave me terrible advice and of course I don't particularly respect your status and I bust in on you when I please, when I am the person that has to be heard.

Now, what are you trying to tell me about that, that under those facts his vote should not be counted or that he is discriminating sexually?

THE WITNESS: No, I am not trying to say that. What I am trying to suggest is that there are several potential indicators that stereotyping is going on and that if you find several of them occurring in a given setting then that gives you a stronger inference, divergent, if you will, that stereotyping is operating. Any given incident like that frequently has an external explanation but when you see a pattern of evidence that indicates that several indicators of [554] stereotyping are present then that leads one to a stronger inference.

THE COURT: What are the indicators in this case, from your study of the material, that you find?

THE WITNESS: Well, there are several that stood out to me. One of them in particular, one of the major indicators of categorical thinking, which leads to stereotyping, is trying to maximize the differences between two groups of people, say males and females, and minimizing the difference within a particular group, so in other words, advising a woman to behave more like a woman and less like a man is a way for people to reinforce their categories.

You know, you are not allowed to behave that way because that is too masculine. So there is a lot of research showing that people when they categorize, you know, maximize differences—

THE COURT: Let me take that up with you. This is very important to me and I am not disagreeing with you, I am trying to understand. If one says that in the context that, now, we are going to expose you. I am for you as a partner. The man talking to you that says to behave more like a woman. I am for you. I am trying to get you to be a partner. But you are going out to the mid-west and you asked me how I ought to behave and I think you ought to put a little sugar on your tongue. Now, you can view that two ways. You can say he is [555] stereotyped. That man is against women. Or you could view it I am for this lady. She needs a little help. This is a conglomerate bunch of very different kinds of people and my advice to you is you have got to put a little sugar on your tongue.

Now, what do you draw from that? Is that man sexually biased or should all the people in the office who he thinks need to have a little sugar on their tongue to get along with others be fired, or what are we talking about in terms of real life?

THE WITNESS: I think there are two things relevant to that. One is—

THE COURT: Do you follow what I am getting at?

THE WITNESS: Yes, I do. I am trying to phrase it coherently.

THE COURT: Take your time.

THE WITNESS: One thing that was striking to me in looking at the evidence for this case was that Ann Hopkins was reported to do extremely well with the clients.

THE COURT: Yes.

THE WITNESS: The clients seemed to have respected her enormously, to have wanted to retain her services over other people, so it seemed clear to me that advice to her about her behavior was not so relevant to her success with her clients. It had more to do with office politics, if you [556] will.

THE COURT: Right.

THE WITNESS: Given that particular advice that was given about her behavior was to behave more like a stereotypic woman it goes beyond you ought to put sugar on your tongue because you are going to hurt our business because the clients wouldn't like you if you are not sweet. So this is only one of several indicators, you understand.

THE COURT: Is there not a stereotype of a person who is sugar and cream with their equals and their superiors and quite different with the people who work for them, doesn't the research show that?

THE WITNESS: I don't know of a stereotype that is that detailed.

THE COURT: That is not a common experience shown by your research?

THE WITNESS: I won't deny that it may exist, but I will say that the research that I know doesn't document that.

BY MR. HURON:

Q Dr. Fiske, perhaps it would be helpful to focus on whether you are concentrating on individuals or a group dynamic here exactly how your analysis is perceived.

A The level of analysis that I look at is the level of analysis of the organization and the organizational cli-

mate, the environment that exists there and the various indicators [557] that is so in this case are all indicators of an organizational climate in which stereotyping is not discouraged.

Q Now, you mentioned one indicator was maximizing the difference between groups and I believe you alluded to Mr. Beyer's advice to miss Hopkins to—

A Categorical thinking.

Q Yes, dress more feminine and so forth. What are some of the other indicators and what is the evidence for them in this case?

A Well, another indicator of stereotyping is biased attention to stereotypic dimensions.

Q What does that mean?

A Well, you notice that the dimensions that I mentioned, you know, with regard to men and women, for example, there is a social dimension that has typically seemed to be the province of women and a task dimension that typically seems to be the province of men.

Given that the majority of the comments regarding Miss Hopkins were related to her social skills or perceived lack of social skills but they were not comments by and large that were related to irrelevant dimensions like stereotypically relevant dimensions like honesty and integrity. Honesty and integrity are not part of either the male or female sexual stereotype so the focus of the comments were on the kinds of personal traits that are related to sex role [558] stereotyping.

Q Okay. So your analysis then is based in part on the long form and short form comments, is that what you are talking about?

THE COURT: I take it you are talking about the negative comments or do you say it is stereotyped to always praise a woman and say she is one of the outstanding people, because that is what they all say.

BY MR. HURON:

Q How does that break down, Dr. Fiske?

A Well, there seems to me to be a very interesting case of selective perception going on here. When I looked at the ways the two different groups of people described the very same behavior, it was striking to me that her supporters described her behavior as, on the long and short forms, outspoken, sells her own ability, independent, courage of her convictions, stamina. All attributes that you would think of as positive.

However, these are counter-stereotypic for a woman. They are what you want in a manager in fact and so for a woman to be a manager she has to behave or is likely to—one particular rule is to behave in a sex role in incongruent ways, to be independent, aggressive and so on. Now, that very same independent, aggressive behavior was positively evaluated by her supporters but her detractors or the people who voted [559] hold or insufficient or no on her described that very same behavior as overbearing and arrogant and abrasive and running over people, so to me that is a warning sign that there is selective perception going on.

The very same behavior—behavior is ambiguous enough that it can be perceived in more than one way.

THE COURT: Sure.

THE WITNESS: And given that her non-supporters were perceiving this sex role incongruent behavior in negative ways, behavior that in a man would be—typically might be considered to be more adaptive because it is congruent with being a manager to be ambitious and aggressive and so on. It fits extremely well with the research literature that I know that says there is a penalty for behaving in sex role incongruent ways and that people who do that are disliked.

BY MR. HURON:

Q Not disliked by everybody obviously.

A Not by everybody but by people who are acting on stereotypes.

Q Are there other indicators such as—are there other indicators?

A Yes, there are some other indicators. Another clue for me or cue, I should say, was the intensity of the negative reaction. The literature on stereotyping of people who are rare in organizations indicates that the negativity of the [560] response becomes disproportionately negative. That somebody who is being seen in terms of a stereotype will be seen in intensely negative ways and it seemed to me that some of the comments by the non-supporters were rather remarkably negative. Disliked by virtually everybody she knows. But that clearly wasn't true, because there were other staff people who were saying positive things. She is very tough-minded and no nonsense and I can get along with her. So the non-supporters were seeing her in a real black and white kind of light and that is a consistent indicator of stereotyping, especially in these rarity type of cases.

Q Dr. Fiske, if I could ask you here, just in common everyday terms, what does it hurt that this stereotyping is going on? What is happening?

A Well, when people are perceiving somebody in terms of a stereotype they are doing two things that are unfair to the individual. One is that they are not perceiving them as an individual. That they are perceiving them in terms of their group, which is unfair to the individual involved. The other thing that happens is—

Q How is it unfair? That is what I want to get at.

A Well, it is unfair specifically because the process of stereotyping accentuates the negative and discounts the positive. I mean everybody has good and bad features.

THE COURT: Are you aware that these comments were [561] not taken at face value, that people went out and personally talked to the negative reactors to find out the basis, to find out what their experience was, to see whether or not—and as far as one man said, he didn't want any women, he couldn't stand any women. So there was an effort.

I am not trying to say how skillful it was or—they certainly weren't psychologists, they were prospective partners, but at least there was an effort to go out and not just take this typing as automatically so, an effort to find out what lay behind it, what caused it, what the basis of it was. Some kind of an effort.

THE WITNESS: It seemed to—well, there are two things. In a specific way related to this particular case, it seemed to me that there was a selective search for the negative to some extent, that there was—it is in the research literature. It is notorious that when people have an expectation they tend to confirm it. They go out and look for evidence and they think they are being unbiased sometimes but if you point out to them, you know, you have to look at both kinds of information, both information that disputes what you think and information that supports what you think, then people can make a better effort to do that.

But people are notoriously biased and inaccurate when they have a hypothesis about a person and then seek information to see whether or not that hypothesis was true.

[562] THE COURT: So this was all decided ahead of time and they just went out to confirm it is what you think happened?

THE WITNESS: Well, I think there is a tendency in that direction.

THE COURT: You think there is a tendency and—

BY MR. HURON:

Q Dr. Fiske, I think you commented now on, as I count, three indicators of stereotyping, that is maximizing the differences between sexes, the acting on it, what you call it, the stereotypic dimension, the intensity of the comments, the negative comments. You have mentioned also the issue of rarity, does that tie into any of those in any way?

THE COURT: The issue of what?

MR. HURON: Rarity.

THE COURT: I don't know what this is.

BY MR. HURON:

Q Well, could you explain what you mean by that?

A The research on what happens to people who are solos or rare within their organization—

THE COURT: I understand what that is, yes.

THE WITNESS: This especially shows that people have very intense and often quite negative reactions to them, the reactions to them are overly negative. More negative than they are to the very same behavior coming from a person [563] in a fully integrated situation and there is research, much of it that controls for the actual behavior, they take the very same behavior and compare it in a solo situation or close to solo situation with a fully integrated situation.

BY MR. HURON:

Q And again, did you find that condition, if you will, present in this case?

A Yes, I did.

* * * *

[564]

Afternoon Session
1:50 P.M.

THE COURT: All right, sir.

BY MR. HURON:

Q Dr. Fiske, you have testified as to your belief that stereotyping was occurring in this situation, but I'd like to know what does this mean to Ann Hopkins, in your view?

A It is my opinion that there was stereotyping occurring in this organization and that it was negative stereotyping and that its effect on Ann Hopkins' evalua-

tion was to accentuate the negative because of her sex and that in this particular setting the decision was based on a few very intensely negative votes that were profoundly influenced by stereotyping, sexual stereotyping in particular, and that in effect she was blocked by a few people who were reacting to her on the basis of stereotypes.

THE COURT: And you realize, or I suppose you realize the key vote that blocked her ultimately was by a man who had been for her? You understand that?

THE WITNESS: What occasion are you referring to?

THE COURT: The man who had been for her on the first round and who had supported her proposal at—when she didn't seem to him to have developed any particular change and he began to hear some additional facts about her and then he had the incidents I told you about her a minute ago, [565] criticizing his advice and busting into his office and all that. He voted the other way but he was for her originally. Is he a stereotype? You see what I am talking about? He wasn't bitten by the stereotype bug originally, though he worked with her, he knew her very well.

THE WITNESS: Well, it is my observation that some of the people in this situation—many of the negative votes were based on stereotypes, it seems to me, based on the content of what those people said which was stereotypic in nature and they were also voting negatively on her. There were also some people who said things that could be interpreted as reflecting their stereotypes, that did not vote negatively on her.

It seems to me those people were in effect overriding their stereotypes and saying even though I don't like her behavior I am still going to vote for her. I think it is also possible to go the other way, to have somebody perceive that other people are reacting very negatively and then to withdraw support on that basis.

THE COURT: You say when it is possible. You mean research in the field of stereotype leaves you with a

sense of certainty about that? Everything is possible?

THE WITNESS: I understand that. I think that in a situation—the research indicates that in organizations which do not present people with incentives for not acting [566] on their stereotypes, the stereotyping is more likely to occur. I think that is the case in this organization. It is striking to me that there was no policy prohibiting stereotyping on the basis of sex, that some of the partnership criteria discuss age, they discuss health but they do not discuss sex or race. Nor did I see any other indication of the evidence that I reviewed that discouraged people from stereotyping based on sex, and so in that organizational climate the norm is not to discourage the stereotype person, it seems to me, and that is something the research indicates.

BY MR. HURON:

Q Dr. Fiske, as, I guess, a footnote to your testimony, is there any research which documents any correlation between or with respect to individuals who hold a particularly deferential view towards hierarchy and those who tend to engage in stereotypes?

A Some of the oldest research in stereotyping indicates that people who are very concerned with hierarchy, who are either concerned that other people—especially concerned that other people be deferential to them are also extremely deferential to people above them in the hierarchy, are especially likely to be stereotypers, to be people who engage in stereotyping.

MR. HURON: One moment, your honor.

Nothing further, your honor. Thank you.

[567]

Cross-Examination

BY MR. TALLENT:

Q Professor Fiske, what materials did you examine as the basis for the formulation of the opinions that you have expressed in your direct testimony?

A I examined the text of the long and short forms on Ann Hopkins. I examined the reports of the office visit on her behalf. The admissions committee report. The policy board notes on Ann Hopkins. I also looked at the long and short form instructions and the criteria for partnership and Paul Goodstat's speech on what it takes to be a partner at Price Waterhouse. I looked at portions of Mr. Beyer's deposition.

Q What portions of Mr. Beyer's deposition?

A I scanned large parts of it. I can say that I looked at the parts in which he talked about counseling her in particular.

Q Were you directed to those parts or did you find them on your own?

A I frankly don't recall.

Q All right. Anything else?

A And I have seen some of the defendant's exhibits related to partner-candidates.

Q What exhibits?

A Which exhibits? I have looked at some of the [568] exhibits related to other women who were proposed and other men who were proposed and the comments that were made about them.

Q As to the other women who were proposed, do you recall who you looked at?

A There was a notebook, I don't remember the exact number, there was a notebook that had approximately six or eight women listed in it and I looked through that notebook.

Q And as to other men?

A There were about three notebooks full of men.

THE COURT: You looked at all those notebooks?

THE WITNESS: I didn't have time to read them all cover to cover, but I did look at some of them to see what the comments were like.

BY MR. TALLENT:

Q How long did you look at the notebooks?

A I believe I spent a couple of hours on that.

Q A couple of hours on the women or a couple of hours in total, in aggregate?

A Two or three hours total.

Q Two or three hours total. How much time have you spent in preparation for this testimony, in total, leaving travel time aside?

A I haven't added it up. Probably on the order of 20 hours, something like that, of specifically looking over [569] the evidence specifically related to this case and going back to the research literature that is particularly relevant to this case.

Q When did you first meet Ann Hopkins?

A Today.

Q Who else have you discussed this case with?

A I have discussed it with Mr. Huron and Mr. Heller. That is it in terms of direct discussions.

Q You looked—you especially read the deposition of Mr. Beyer?

A Yes.

Q And did you form any professional conclusions with respect to Mr. Beyer on reading this deposition?

A It seemed to me that Mr. Beyer was counseling her to behave more like a woman and less like a man in a stereotypic sense.

Q Did you draw any conclusions from that with respect to what Mr. Beyer's actions in that regard had on her candidacy for partnership?

A The level of analysis at which I draw conclusions about stereotyping is whether stereotyping is occurring within an organization. I do not try to identify particular individuals as stereotypers or not stereotypers.

Q So you have no professional conclusion with respect to Mr. Beyer.

[570] A. I wouldn't say that.

Q What is your professional conclusion?

A I would say that his counseling of her particularly given that it was intended to reflect the opinion of his partners as to the ways in which she could improve her

chances was a representative of what the organization preferred. He was acting on behalf of the organization, was my reading of it.

Q Well, now, let's suppose—you are an expert on stereotyping. Let's suppose you were going to give a woman advice in an organization where you suspected that perhaps some of the actors in the organization or actresses could be the victim of the stereotype bug. Would it be good advice or bad advice to say behave the way they want you to behave, those awful stereotypes?

A I think there is a double bind for women who are professional women, managers, for example. If you tell them to behave in ways that are sex role stereotypic, that is, not to be too aggressive, not to be too competitive, to be dedicated and supportive of other people but not to go out too much on their own, then they are seen as incompetent managers.

THE COURT: Well, where is that advice in this case? Did anybody tell this woman not to be competitive?

THE WITNESS: No, no, I am just describing—he [571] asked—

THE COURT: I have been sitting all week and I haven't seen the slightest evidence that anybody told her not to be competitive. They were encouraging her on her competitiveness and said to win the business.

THE WITNESS: I said there was a double bind. One of them, if you counsel somebody to behave in feminine ways, the other is to counsel someone to behave in ways that are not stereotypical ways, but I would warrant her that this would have a cost, that women who are aggressive, behave in aggressive, independent ways are perceived to have a lack of social skills and what I would tell her is to work in a department that has a substantial number of women in it.

BY MR. TALLENT:

Q A department of the organization. Let's address this rarity. Where did you get this evidence of rarity?

A The research suggests that people who are—

Q Excuse me, I am not directing to the research. I said where did you get the evidence of rarity in this case?

A From my understanding that there are an extreme minority of women partners and that she was the only woman proposed that year for partner out of 88-odd candidates.

Q All right. Let's deal with the environment in which she operated and let's take you to your environment. Would you describe women as rare in the following factual [572] situation? That 30 percent of the assistant professors at Tufts are women, that 35 percent of the associate professors at Tufts are women but that 5 percent of the full professors are women, would you describe that as women being in a rarity condition at Tufts in that particular department?

A Are you talking in a particular department those are the statistics?

Q Yes. Let's take a particular department or the whole university.

A Well, it makes a difference. The rarity phenomenon or the extreme minority phenomenon pertains to a particular department within an organization and at a particular level so, for example, having a lot of female secretaries is irrelevant. That doesn't help.

Q How about female professors now? An associate position. Professors?

A What I can speak to about that is that to the extent that being a tenured female professor is an extremely unusual phenomenon. Then when women come up for tenure they are one of the very few people who have been considered at that point and they stand out by virtue of that.

Q Isn't that the same condition of rarity as if there were 5 percent women in the whole of the faculty?

A No.

Q The condition is considerably diluted, is it not, [573] by the large number of women in my hypothetical?

A Excuse me, did you say diluted?

Q Diluted. The condition of rarity is diluted. I am a little unfamiliar with this terminology so if I blow it, forgive me.

A It is somewhat diluted but the major is the level to which the person is aspiring.

THE COURT: You understand that if this organization that we have in front of me now said, well, there is some stereotypes around here so all the women have to work together, I would have more lawsuits. You just said a moment ago that what you would do is you would put her in a position where she worked with other women. And I take it then I would have many more lawsuits because every woman that had that happen to her would say it was a sexual bias.

THE WITNESS: I am sorry. Perhaps I didn't put it clearly enough. What the research literature indicates and I think common sense indicates too, is that if you have a critical mass of women in a particular department and the research literature indicates above 15 or 20 percent at a particular level then these effects are really undercut quite a lot and so if you are only going to have 5 women in an organization it is better—it is not good to have a woman's department because then the department becomes stereotyped as a women's department and the department becomes undesirable. And the research indicates that. But if you can cluster [574] people then these effects don't occur so much. Batch hiring is what the—and batch promotion is what the researchers in this area suggest.

BY MR. TALLENT:

Q You don't have many lawyers researching this area do you?

A Lawyers researching the area? Not that I know of.

Q Let me understand this a little better. Your conclusion that stereotyping is working adversely to Miss Hopkins is based in large part on the comments that she received from the various partners who commented on their exposure to her, is that correct?

A I believe that it is based on the same evidence that the admissions committee used.

THE COURT: That is the comments, the long and short form?

THE WITNESS: Yes.

BY MR. TALLENT:

Q All right. I direct the witness's attention to defendant's Exhibit 27.

THE COURT: May I have defendant's 27.

MR. HURON: The same information as in plaintiff's 21. I think it may be organized differently.

MR. TALLENT: It is ordered differently, so that causes some confusion. Well, all right, by name, the [575] commentator's name is on the right-hand margin.

THE COURT: You can handle it that way even though the exhibits are a little different. The text is the same, I take it.

BY MR. TALLENT:

Q We have a number of comments here. Would you identify those for men that demonstrate to you that stereotyping is going on?

A Well, there were—one of the indicators that I discussed was the pattern, and I will describe who contributes to that pattern but the pattern that people who were not in favor of her were interpreting this independent, assertive behavior as a liability. Some examples of that are, for example, Mr. Statland on page 2006—

MR. TALLENT: 2006. Yes?

THE WITNESS: Saying she is potentially dangerous. Making—Mr. Coffey who at that time was not in favor of her although I know that later he—

BY MR. TALLENT:

Q Let me stop right there with Mr. Statland. Are you familiar—did whoever gave you this exhibit tell you that the comments that were considered to be positive comments by the organization are the ones that are set out to the margin? The comments that are believed to be negative or in the negative side are indented?

[576] Okay? Now, Mr. Statland's first comment that she is aggressive, bold, and mesmerizing of clients and partners. Which side of the stereotype that you just described to me, described to the court, does that fit in?

A He is focusing on stereotype-relevant dimensions, that is clear. He is not focusing on her performance per se. Her ability to retain clients.

Q Do you know who Mr. Statland is? Did anybody tell you who he is and what his role is in the firm?

A Yes.

Q What is it?

A Well, my understanding is that he is, for example, the person who made the speeches on the—

Q That was Mr. Goodstat.

A Oh, sorry, sorry. You are right. There were 6 partners who filled out long forms on her. He is one of the people who did that.

Q Yes. What does he do in the firm is what I am trying to get. What you understood about his comments.

A I am not sure precisely what he does in the firm.

Q Suppose I told you that he is the firm's technical expert on electronic data processing, is it stereotypical of Mr. Statland to say this woman doesn't know anything, has little substance, in his opinion, and therefore might be dangerous, is that stereotypical, in your view?

[577] A The conclusions that I draw are based on a pattern of indicators of cross-people. In any given instance I think it is possible to come up with an alternative explanation for that particular person but my considered judgment is that a pattern of comments that is

related to her counter-stereotypic behavior is based on stereotype, stereotyping.

THE COURT: You see, you have got some laymen here who are trying to understand. We are not questioning your sincerity. But is it, for instance, stereotyped for him to say, and apparently that is part of what you are looking at, that she will bend to clients' demands too easily? Is that a stereotype comment by a man about a woman?

THE WITNESS: In the context of Ann Hopkins, I would say it seems unlikely because most people didn't view her as somebody who bent to people's demands easily.

THE COURT: So though he says she is aggressive, bold, and mesmerizing of clients and partners you took that to be a sexist remark when he said she did bend to clients too easily?

THE WITNESS: I didn't take that as a sexist remark. What I am—my understanding is that in that particular firm viewing somebody as aggressive and bold is a positive way to view them and it is task related.

THE COURT: Yes. And they gave her favorable marks.

[578] THE WITNESS: On that.

THE COURT: But that isn't stereotyped. You would say—I thought I understood your testimony to be that if someone was that way they'd be negative about her.

THE WITNESS: My testimony is based on a reading of a pattern of negative comments that are stereotyped relevant such that viewing her as overbearing and arrogant and abrasive and running over people is a way to interpret assertive and ambitious and aggressive behavior but to put it in a negative light.

BY MR. TALLENT:

Q But that isn't what Mr. Statland says, is it?

A Mr. Statland says—I am not trying to say that somebody who is stereotyping is incapable of having any-

thing positive to say and in his context to say that she is aggressive, bold and mesmerizing and writes and speaks well, commands authority, is a positive thing to say.

I think that whoever wrote the comments—whoever typed the comments could not have believed that little substance and potentially dangerous is a positive thing to say.

BY MR. TALLENT:

Q I think that is indicated by the intention but the comments that he is construing as favorable to Miss Hopkins are anti-stereotypical, are they not, professor?

[579] A That is precisely my point. My point is that nobody disagrees that she doesn't behave like a typical woman. I would submit that the people who view that as adaptive behavior in that organization and as a good way to get promoted are not acting on stereotypes. The people who view that as abrasive and obnoxious are people who don't like it when women behave that way.

Q So Mr. Statland's a cross? He thought it was good behavior but didn't recommend her for the partnership.

A It appears that way.

Q Is it stereotypical—are men and women viewed differently with respect to this substantive knowledge?

A They can be except in cases where there is overwhelming, very specific objective task-related evidence to the contrary.

Q All right. Now, let me ask you something generally about this business of stereotyping. You have relied heavily on Professor Condon's study, is that it?

A Cantor.

Q Cantor? Professor Cantor was studying what?

A Professor Cantor wrote a book called "Men and Women of the Organization," and she studied a large northeastern organization. In particular she was focusing on the managerial level.

Q What kind of organization?

[580] A It was a large industrial supply organization in the northeast with 50,000 employees.

Q How many managerial types?

A Hundreds. I can't quote you exactly how many.

Q It was an industrial concern?

A But with a large managerial sales staff.

Q Are these stereotypes that you deal with in the research, are they demographically sensitive?

A Could you explain what you mean?

Q Sure. That is to say, do people with Ph.D's react differently or likely to react differently than people with high school educations or rich people likely to react differently than poor people or people in the west likely to react differently than people in the east, people in the south than in the north? Is there a generational gap? All of the demographic characteristics of the audience. Or are stereotypes really stereotypical?

A The content of the typical man, typical woman stereotype is surprisingly constant across years and types of people and so on. There are specific male and female subcategories like being motherly or being a shrew, which also show up across all different kinds of demographic conditions. The expression of those stereotypes is responsive to people's educational level.

Q Responsive to people's educational level?

[581] A Yes.

Q And how does educational level impact on stereotypes?

A Well, people are less—people are more sophisticated the more educated they are, typically, generally speaking.

Q Stereotypically speaking.

A Less likely to be—no, I am not saying stereotypically actually. I am generalizing. Just from a common sense point of view even. People are less likely to be blatant about it if they know it is not something they are supposed to be doing.

Q From a common sense point of view?

A Yes.

Q And is it your stereotype that the more educated people have more common sense?

A No, I didn't say that. I think that it is very likely that people who are more educated are less likely to be blatant in their expression of their stereotypes.

Q Did you do any demographic study of Price Waterhouse, particularly the partner ranks, to determine how it should fit into the research?

A No, I didn't, but it seemed very representative and the research comes from a broad range of evidence.

Q Broad range of evidence. None of them were large public accounting firms?

[582] A Not specifically accounting firms.

Q None of them were large professional organizations like law firms, I suppose?

A Well, actually some of the evidence—some of the research evidence does use professional decisions about people, decisions to promote people to manager, decisions at a professional level.

Q Are you talking about the recognized professions? By that I mean those for which there is specialized training and licenses?

A Yes.

Q But it is sensitive to education, is that correct?

A The expression of stereotypes is sensitive to education.

Q Did you do any study here, numerical study to correlate the negative votes, if you will, with respect to Ann Hopkins in the expression of stereotypical remarks?

A I did not do a numerical study but I took a piece of paper and listed on one side the comments—the comments related to stereotypes for people who voted for her and people who voted against her and it was overwhelming to me.

Q Do you have that piece of paper?

A Well, I have got excerpts from it here which I have read already.

THE COURT: Well, we started to get examples of what [583] you thought were stereotypes and it would help me, I think, if we can do that in some reasonable way without necessarily being comprehensive but—

THE WITNESS: Let me—

BY MR. TALLENT:

Q You had just mentioned Mr. Statland and you were moving to Mr. Coffey when I backed you up there, so let's talk about Mr. Coffey's comments.

A Mr. Coffey's at a time when he voted hold on her although later to the contrary came in, as I understand it, and changed his mind, said, "she is just plain rough on people. Our staff does not enjoy working for her. There is a risk she may abuse authority."

Q Now, fit that, if you would for us, into your stereotype structure.

A Well, for example, the comment that she may abuse authority, it seems to me that is a rather extreme comment in light of the general types of comments that people are making about her in general and also looking at some of the other comments about partner candidates. It is comments like that saying she is potentially dangerous, saying she is—Mr. Everett said she was, quote, universally disliked, for example. Those are very strong comments to make and it is my understanding that she was not universally disliked.

Q From what did you get that understanding?

[584] A From reading other people's comments which said nobody left, who say that the staff wanted her recommendations, some of them, when they left. There was one person, you know, who said she was difficult but he wanted her recommendation. He respected her, quite clearly.

What I am suggesting is that when you see a few individuals' comments who are disproportionately negative although they are talking about the very same behavior that everybody agrees exists, which is a very independent,

assertive person, that they are exaggerating the negative, which is a sign of stereotype.

Q All right. Who else besides Mr. Coffey?

THE COURT: And that would lead them also to exaggerate the positive?

THE WITNESS: Not necessarily—

THE COURT: They've made the most extraordinarily positive statement about this woman that I have ever seen in a document of this kind. No one is her equal. She has got more brains than all the rest of us, and does the stereotype make them say those favorable things?

THE WITNESS: The difference I think is that the realms in which they say positive things about her are areas in which the criteria are much less ambiguous. They are talking about job performance types of things. Does she—

THE COURT: Well, dealing with people is part of [585] your job.

THE WITNESS: Of course it is, and my understanding is that she did rather well dealing with clients and she did well dealing with many partners and many staff but there are some partners who objected to her behavior.

THE COURT: And because they didn't like her they are stereotypes? You see, there is a personality factor here. Two people can look at the same person, two males, and one of them likes her and the other one not.

THE WITNESS: Sure.

THE COURT: And maybe they just generally didn't like her.

THE WITNESS: Well, the reason that I think it is not just general dislike and that it is stereotypic is because there is this convergence of these indicators of trying to get her to be more feminine, that the comments are all on stereotypic personality trait dimensions and not on things like integrity and sincerity. That the comments, some of them, are really rather extreme. Remarkably intense.

BY MR. TALLENT:

Q Professor, I have a little trouble with vocabulary here. I apologize for it. Would you describe for me the convergence between the comments of Mr. Beyer and the negative comments that you see elsewhere? How does that nexus or convergence occur, professionally speaking, of course?

[586] A Mr. Beyer, for example, says, "she sells her own ability." Okay? That is obviously in that particular context a positive thing to be able to do. One wants to be able to sell one's ability to a client so they hire you. One could also see that as arrogant, if one wanted to interpret it differently.

Q I am not seeing the convergence between the negative in Mr. Beyer's comments.

A When I am talking about convergence I am saying that across the people who were non-supporters of her there is a negative theme that runs through that. There is a negative interpretation of this assertive, independent behavior and that seeing that on sex role relevant dimensions alerts me to the possibility of sex role stereotyping, combining that with antecedent conditions like somebody who is in an extreme minority in an evaluation situation that is fraught with ambiguity alerts me to the possibility that there is stereotyping going on. The convergence that I see is that two different groups of people are evaluating the same behavior very differently and that the ones who are evaluating it negatively are—fit very closely to people's negative evaluations of counter-stereotypical behavior.

Q Let's look at Mr. Warder's comments. He is next.

A I wouldn't say that that is one of the stronger pieces of evidence.

[587] Q Is it a piece of evidence at all, professor?

A It is ambiguous. "A few rough spots" is not a particularly strong negative.

Q And the first sentence you would read as being strongly positive, I take it?

A That is true. That is not inconsistent with what I was saying though about counter-stereotypic behavior. She may be recognized on a task dimension as being very competent but perceived as socially abrasive.

Q Mr. Warder's comment in your view is stereotypically neutral, is that fair?

A It is somewhat more neutral than some of the other ones I would single out.

Q Then I must repeat my question. What is it about —how do the words "rough spots," and I take it that is all you rely on, fit into the stereotypical literature, and I'd like a specific reference to the literature at this point.

A That particular comment is not strong evidence that fits into the stereotypical literature.

Q Okay. All right. Let's look at Mr. Beyer's comments. How do they fit into the literature?

A Mr. Beyer was a supporter of hers and I am arguing that on the whole, on the average the supporters were viewing her behavior in light of her job performance and its relevance to the goal of being a partner.

[588] Q All right. How about—so is Mr. Beyer's comments stereotypically neutral or counter-stereotypical, or how is it?

A It is not informative.

Q Not informative. Okay. How about Mr. Epelbaum's comment? I am sorry, 2005.

A Oh, okay. Mr. Epelbaum is a complicated situation because he is somebody who changed his mind about her and so it is not clear to me whether he was a supporter or a non-supporter.

THE COURT: He ended up being opposed to her.

THE WITNESS: Yes. So in this particular case he is voting yes for her. On the other hand, he is using all the same terms that the people who voted no all along used. He is talking about her as abrasive, unduly harsh, difficult and so on.

BY MR. TALLENT:

Q I am a little troubled. In your experience, professor, are there abrasive women?

A It is certainly possible, sure.

Q There are. Have you met them?

A Yes.

Q Are there mean women?

A Yes.

Q Are there arrogant women?

[589] A What I am suggesting is that—

Q Let me finish.

A Okay.

Q Are there arrogant women?

A Yes.

Q Women who are just plain rude?

A Yes.

Q Now, if I run across one of these women and I comment that she is just plain rude, what must I do to insure that my own reactions are not springing from some deep-seated stereotype that I am carrying around in my bosom?

A Well, if you say she is the rudest person you ever met you should pay attention to what she said. Because she is unlikely the rudest person you ever met. When people say extreme statements like that, they should be re-examining the basis for those statements.

Q How about one of the ruder persons, rudest persons I have ever met?

A That is a pretty extreme statement, too.

Q Extremely rude.

A That is an extreme statement, too.

Q Very rude? But there are such people.

A Well, there must be.

Q There must be. If there must be such people—you see, I have on the one hand data that I think I am taking in [590] and I am processing it through my head and trying to say something about it. What do I have to do

to this head in order to process that data non-stereotypically?

THE COURT: Perhaps this helps. Pardon me for interrupting. You have testified that in your professional opinion stereotypes played a major determining role in her rejection as a partner and that you say so with reasonable certainty. Well, then, you see, that requires an analysis of whether that—of what that opinion is based on, acknowledging for example—perhaps that there may be in all these documentations some stereotype remarks, one, two, three. There is certainly one gentleman that everybody laughed at was so stereotyped that nobody would pay attention to it.

Now, the question is an attempt is being made to identify what you are relying on to see if there is support for your view that it played a major determining role, with professional certainty, which is what you state. Do you follow what I am—

THE WITNESS: Yes, I am sure you're—

THE COURT: And that is what we need to get at.

THE WITNESS: Could I clarify it a little bit?

THE COURT: Oh, certainly, but I wanted just to indicate why this is getting to the specific because that is the only way your opinion can be tested in this kind of bizarre atmosphere that we are in here in this courtroom.

[591] THE WITNESS: Let me read a list of adjectives that were used by people who voted against her. Mr. Green said that she was "overbearing." Mr. Haller said that she was "arrogant." Mr. Haller also said that she was "self-centered." Mr. Hart and Mr. Blythe said that she was "abrasive." Mr. Coffey, when he was voting against her said that she "runs over people." Mr. Hoffman said "she implies she knows more than anyone in the world about anything and is not afraid to let anybody know it." Statland says "she is disliked" and Mr. Statland said, "she is potentially dangerous."

That is a pattern of extreme negative comments that contrasts remarkably in my mind with a pattern of posi-

tive comments about what is clearly the same behavior, Mr. Krulwich who said she was "outspoken." Mr. Beyer who said, "she sells her own ability." Mr. Loenis saying "she has a will to get things done." Mr. Powell saying "she is independent." Mr. Powell again saying "she has the courage of her convictions." Mr. MacVeagh "she is authoritative and formidable."

Mr. Hoffman saying "there is no question about who is the leader, no nonsense kind of person." I see a very striking contrast in the way the very same behavior gets framed. And I am an experimental scientist, what we do frequently is take the very same behavior and put it in a situation in which the antecedents encourage people to stereotype.

[592] THE COURT: You notice, however, that this organization anticipated that, in having each of these individuals compare this particular candidate to all the other candidates in the last four or five years.

THE WITNESS: In the instruction for the long and short forms?

THE COURT: In the statistical analysis. Now, wasn't that one way to try to get at that rather than—you see what I mean, adjectives are used by different people sometimes differently but there is a difference clearly in what you point out but then they ask these people not to stop there. They said looking at this person with respect to these various qualities how do you rank this person in relation to the people you have been thinking of for the last five or six years? Did you follow what those rankings were?

THE WITNESS: Are you talking about the numerical part of the forms that they fill out at the end where they circle numbers and so on?

THE COURT: Yes.

THE WITNESS: If you look at the traits descriptions of her it is very interesting to me that the two traits on which she is less positively evaluated than all the other ones are, I think it is sensitivity and tact is one and

tolerance is the other. Now, if you work blindfolded to show that to somebody who studies sex role stereotypes and [593] say what are women supposed to be more than anything in all these traits, tactful and sensitive and tolerant, okay? Simply because they are circling numbers on a scale doesn't mean that they are being more objective. They are still judging personality traits.

BY MR. TALLENT:

Q So if I said there was evidence in this case that some of the very people who called Ann Hopkins arrogant had called men arrogant, described men candidates as arrogant and had voted against them as well, what would you say was going on? Suppose I said that the evidence is overwhelming? I will just represent it to you, the evidence is overwhelming that Price Waterhouse partners do not like people who they perceive as arrogant or overbearing.

THE COURT: Male or female.

MR. TALLENT: Male or female.

THE WITNESS: I wouldn't have any argument with that. What I am suggesting are two things, one is having the criticisms of her personally be a sufficient basis for rejecting her makes me suspicious. And in some of the cases where I looked at where men were called arrogant the admissions committee report said that given that this person has no major redeeming skills or technical competence this personality trait is a problem so in those cases the personality trait was not in and of itself a sufficient basis for rejection. [594] So that is one thing.

BY MR. TALLENT:

Q Did you sample that in any scientific way that I can take an empirical number to see if you had a scientific basis for that?

A I looked through the exhibits, the notebooks and looked at the front page that has the admissions committee report.

Q Did you count them?

A No, I didn't.

Q You testified on direct examination that there are two forms of accepted method in your particular trade. One of them was surveying and the other was laboratory research. Which was this study?

A This study was neither one. It was based on my knowledge of the research literature and the extent to which the situation fits it. I didn't get a chance to finish—

Q Did you take a hypothesis to the data here?

A No, in fact I did not.

THE COURT: Why don't you let her finish her other answer and then you can go ahead?

MR. TALLENT: I am sorry.

THE WITNESS: The other part of my answer was that I wouldn't call it stereotyping to talk about men as arrogant because it is not a counter-stereotypic behavior for men to [595] be ambitious and assertive. It is for a woman to be. So calling a man arrogant is not stereotypic.

THE COURT: But you don't draw any significance from the fact that the men call a man arrogant and then they don't take him in the partnership, that perhaps they are interested in having non-arrogant partners?

A Oh, I am sure they are interested in having non-arrogant partners. But it was my understanding at any rate that the men I looked at who were called arrogant were also incompetent in other dimensions.

THE COURT: So you don't put any weight on that. I can understand why. If they are incompetent it doesn't make any difference if they are arrogant or not.

THE WITNESS: It wasn't the major determining factor.

BY MR. TALLENT:

Q And your sample was of how many?

A I don't count them, frankly.

Q Your professional conclusions here are not reached then on any empirical basis?

A I am an expert in observing behavior and at drawing conclusions from written documents. The kinds of data that we get from our subjects are frequently written descriptions of other people. That is precisely what these are.

Q And you don't try to get any empirical base so you [596] have a statistical significant sample.

A This—you don't need to have a sample in this particular case because I have the entire population of comments that were made about her.

Q But you don't have the entire population if you haven't studied the entire population of comments made about men to find out whether this is affecting her as a woman.

A I compared it to the comments made about men.

Q Some men.

A Some men. Not every single man that was ever considered, no.

Q Did you look at all 90—89 candidates for this year?

A I looked at a large proportion of them.

Q Of what proportion, professor?

A 20 or 30.

Q 20 or 30. Well, I am still struggling a little bit with this notion about when a comment is stereotypical and when it is not. Some of these folks describe Miss Hopkins, as you have read back to me, as overbearing, arrogant, self-centered, abrasive, thinks she knows more than anyone in the universe, and potentially dangerous. Would you think it would be somehow a stereotypical decision to exclude such a person from the partnership, if that was in fact true?

A I am not qualified to say whether or not it is true. [597] Q Okay.

A Because I didn't observe her behavior, I am not here to speak to that.

Q So you haven't observed her behavior but you have concluded that in making the particular observation of her behavior that Mr. Green who describes her as overbearing was somehow behaving in a stereotypical fashion? How can you do that?

A I can do it because there is research showing that women who behave in counter-stereotypic ways are frequently disliked for that. And that very same behavior coming from a man is not disliked.

Q Do you know Mr. Green to know whether he evaluates data that way?

A My testimony is based on a pattern of indicators. I do not know Mr. Green.

Q And the pattern of indicators here is that in your words that many of the people who she came in contact with characterized her that way?

A Some of them did.

Q Does that suggest that maybe she at times showed those characteristics or does that simply in your professional opinion, professor, show that they are reacting to some stereotypical bug that has bitten?

A In my selective opinion people selectively perceive [598] behavior.

Q All people do that?

A Behavior is ambiguous. It is open to multiple interpretations. When those interpretations are directly in line with a stereotype, that suggests that it is being selectively perceived and stereotypically.

THE COURT: One of the aspects of this that I am thinking about, the people that were against her used stronger adjectives than the people who were for her in describing the same conduct. That doesn't necessarily—all these people were—are debating with each other. Some of them are trying to sell. Some of them are trying to block. So if somebody taking all the different factors into account as against her and using stronger adjectives to sell the negative position does it necessarily follow,

according to the research, that that position is stereotyped or does it follow that they are just against that person?

Do you follow what I mean? We all tend to use stronger language to get our point of view across.

THE WITNESS: Well, what is striking to me is that the people who were for her certainly were using very strong positives and many of the people who were against her were also using strong positives about her task performance, per se, her ability to work with clients and so on. When her supporters are describing her in her personal behavior [599] they are not using extreme statements, they are using fairly moderate statements.

THE COURT: They are noting it but they are down-playing it, aren't they? Or they are putting a different flavor on it.

THE WITNESS: Yes. That certainly seems that way to me.

THE COURT: And the people who are against her are putting a more negative flavor on the same thing maybe.

THE WITNESS: That kind of extreme negative is very typical of situations where you have got a very small minority being evaluated. Maybe it would help to explain why that is? Maybe not.

THE COURT: Well, if counsel wish.

BY MR. TALLENT:

Q Well, I am a little concerned with this notion of very strong minority. I understand Miss Hopkins was one of—was the only partner—candidate in this particular year. What did you—how many women professionals do you—were you told that Price Waterhouse hired or had working at Miss Hopkins' same level in the Office of Government Services in Washington, D.C. when all of this happened? What percentage of those folks were women?

A That is not really the relevant question from my point of view.

[600] Q Do you know the number?

A I do not know that.

Q Did you ask the question?

A I did not ask it because it wasn't relevant.

Q It wasn't relevant?

A No, what is relevant is the pool from which she is being selected and the job to which she aspires.

THE COURT: Well, that is the pool that she is selected from.

THE WITNESS: Well, the partnership pool that year, as I understand it, had 88 people in it. She was the only woman.

BY MR. TALLENT:

Q But the people that she was competing with to get proposed was these other people, this pool of senior managers, full of women.

A I don't know how full of it it was.

Q 35, 40 percent to give you a number.

MR. HURON: Objection, your Honor, that is contrary-looking at—plaintiff's Exhibit 38-B sets forth what the pool is that year and that is our estimation of the pool which is larger than the defendant's estimation. 21.

BY MR. TALLENT:

Q In the Office of Government Services on July 1, 1982 Professor, the pool of women senior managers according [601] to Exhibit 67 is 25 percent, in 1983 it is 32.7 percent, the year prior, July 1, 1981 it is 23 percent. The year prior to that it was 33 percent.

A But they are not all being proposed for partner that year. Some of them are expected to be proposed for partner two or three years down the road so they are not really in the same pool.

Q They are all in the pool being considered?

A A senior manager who's only been on the job for a year is not in the partnership pool.

Q From what do you derive that?

A My understanding is that people have to be in the firm for 6 or 7 years oftentimes and that the pool of people who are actually being considered for partner, of which she was a part of this process, was—were those 88.

Q Well, I was talking about the proposal pool in OGS.

A I would have to see the statistics on how long they had been there and how reasonable it was to expect them to be proposed for a partner in that particular year.

Q And what would that mean?

A It would enable me to see whether the people who might reasonably have been expected to be proposed that year was really 35 percent female. It seems to me bizarre that it could have been 30 percent female and only one out of [602] 88 made it to the proposal stage. 30, not 35.

Q Out of the Office of Government Services she was 33 percent of the proposals.

THE COURT: She was 1 out of 3.

BY MR. TALLENT:

Q One out of 3, would that help you a little?

A I think those numbers are too small to treat in a statistical fashion. Three people. The pool that the admissions committee was dealing with is the pool of 88.

Q No. I was looking at a different issue in the case and that is the pool because most of the really important observations here of her occur—are in her competition in the pool in the Office of Government Services.

A I don't necessarily agree with that.

Q On what basis do you disagree, Doctor?

A The 6 people who wrote long forms on her were essentially colleagues who worked with her in her capacity in the Office of Government Services.

Q No, ma'am. That is contrary to the evidence, but go ahead.

A Okay. I misunderstood you.

Q What other basis do you have for it?

A I am making—I am making a strong suggestion that the relevant pool is the pool of people whose application forms were in the pool at the same time hers was. [603] Q For at least the 1983 partnership decision, is that right?

A Yes.

Q The Court asked you a set of questions at the end of your direct examination with respect to Mr. Epelbaum's position in the matter, pointing out to you that he had changed his position over time. And it was your suggestion—in fact you said that the research indicates that people such as Epelbaum are greatly subject to being—reversing their positions—

A I don't believe I said that.

THE COURT: You said where there was negative atmosphere, people would change their position in order to join the negative crowd and that was stereotyped.

THE WITNESS: Well, I believe people are open to conformity pressures, especially if they are ambivalent to begin with.

BY MR. TALLENT:

Q Your statement was that that was indicated in the research. Now, I want to know what research.

A The research on conformity indicates that to the extent that people's judgments are ambiguous or ambivalent they are more likely subject to conformity pressures. He indicates that he thinks she has some good points and some bad points which indicates that he has an ambiguous impression [604] of her and therefore would be more open to conformity pressures. I am not sure that that—certainly that that is what is going on in this case, but that certainly fits.

Q And how would such—how does the research again indicate that such a person should react? Is it the hierarchical situation that that kind of person is in, would that be a pressure on him to change?

A It certainly is possible that if somebody—explain what you mean by the hierarchical situation.

Q Well, if he knew that his boss was a strong supporter, for example, of Miss Hopkins and was going to be mad as the dickens at him if he changed his view, which way would that pressure cut?

A That pressure would cut in favor of his being positive. However, if there was pressure showing that a large group of other people were not in favor, then that pressure would cut the other way.

Q So it would have to be a large group of people in order to—

A Or people he perceived to be potential allies, which was a position he was inclined toward.

Q Do you have any other—I guess you have given us enough. You primarily reacted to these adjectives that you have given me, overbearing, arrogant, self-centered, abrasive, believes she knows more than anybody else. That is what you [605] are relying on?

A No, that is only one of several indicators.

Q What's the other indicators?

A Some of the other indicators that I discussed were the tendency toward categorical thinking, which to me is indicated by counseling sessions that—not only by Mr. Beyer but by Mr. Epelbaum and Mr. Laughlin as well.

Q Let's set those counseling sessions in some kind of context. You have a—you are generalizing, I take it, about a firm's behavior based on conversations that in a career span of 5 or 6 years maybe lasted, I don't know, two minutes? Two minutes out of 5 years? Would you think that was—you have got that in that context, that these were very short conversations.

A It is my understanding that these conversations were designed to give people performance feedback and were rather more significant than just any random two-minute conversation.

Q I am suggesting—in fact the record is that some of those conversations took an hour and a half and I am

suggesting to you that that two minutes of that hour and a half was devoted to the subject of wearing a little jewelry.

A My understanding was that, and we can look back to it if you like, that the counseling sessions were not simply—that the counseling of her to be more feminine was not simply [606] wear more jewelry, but it was also soften your image, tone yourself down, don't walk so stridently, don't wear such masculine clothing, pay more attention to your appearance, wear more jewelry.

This is a pattern of comments to her over time that is consistent with the advice to be more feminine, not to be so assertive.

Q Will you show me where you find in the records you looked at that say please don't be so assertive?

A Yes. In the counseling session with Epelbaum in June of '82 he told her that she was being too assertive, that is what I have written in my notes, and to be more tolerant, patient and, in effect, nurturing the staff. He didn't say nurturing.

THE COURT: Do you have any idea what that was based upon? Do you have any idea what that was based upon? That remark by Mr. Epelbaum? He had a group of managers in the company talking about how the job was going, women, men managers, including this plaintiff. He was asking for suggestions on how they ought to proceed. And another woman spoke up and she was told by Miss Hopkins to keep still. It wasn't relevant. So he said, look, we are all trying to work on this. You shouldn't be so assertive. A stereotype?

THE WITNESS: I would suggest that the same behavior coming from a man would be less likely to be focused [607] on as much as a problem.

THE COURT: Well, he probably would have fired a man. I agree with that. If a man had done it, he probably would fire him but other than that I don't understand what you are talking about.

MR. HURON: Your Honor, if I may, I think the record would reflect that—

MR. TALLENT: Excuse me, counsel, are you objecting or what are you doing?

MR. HURON: I wanted to make a point, if I may. I think the record will reflect that at the time of the counseling session in question in June of '82 it was I believe before some of the—

THE COURT: There was one after when they met her.

BY MR. TALLENT:

Q I have a little trouble with the vocabulary here because I get some synonyms, I think they're synonyms. Mr. Epelbaum said that she was, in this session, look at Exhibit 17, "a hard worker, honest, a high degree of integrity and independence. Articulate, decisive, self-confident and very bright." Is that a counter-stereotypical set of attributes?

A Yes.

Q Then he goes on to criterias of improvement and says, "sometimes overly assertive," and there is an indication [608] here that Miss Hopkins agreed with him. Now, how do we fit that agreement into this equation?

A She is an employee who is being counseled—a junior employee who is being counseled as to how to improve her chances for partnership. It is certainly the politic thing to do to listen carefully to the feedback you get and not argue with it.

Q Is that stereotypical or not stereotypical?

A It is office—

Q Just good sense, isn't it?

A It is good sense.

Q So calling the same partner stupid is not good sense, right?

A Probably not.

Q I am still—when you talk about this—I was still looking for this literature that indicates that Mr. Epelbaum was subject to these pressures. You said it was in

the literature and I was anxious for you to cite the literature.

THE COURT: Well, your basic point on that is that people tend to want to conform, either men or women.

THE WITNESS: Yes, that is not sex stereotyping.

THE COURT: It's not sex-related. It is just psychologically so that males and females like to conform.

THE WITNESS: It is possible that he was conforming [609] in the first instance to—

THE COURT: And it only has a sexual aspect if the attitude that he is conforming with is sexual. Wasn't that what you were trying to tell me on that?

THE WITNESS: Yes.

* * * *

[610] BY MR. TALLENT:

Q In your—in the literature and research on stereotyping, what if—we have explored a little that there is some demographic impact on stereotyping, what impact is there on—or propinquity of a particular possible victim of stereotyping with the stereotyper? I believe that has been the subject of extensive research.

A There is some research on propinquity, yes.

Q What does it indicate with respect to the likelihood of stereotyping?

[611] A Well, the research on contact indicates that contact with a potential victim of stereotyping sometimes undercuts the stereotype but sometimes exaggerates it.

Q Is the extent of contact a factor?

A Not really except that the exaggeration frequently occurs as a result of—in other words, under some very specific circumstances stereotyping can be undercut by contact but under other circumstances extended contact would exaggerate it.

Q Give me an example, and the reference to what those touchstones are.

A Well, for example there is a review in the race relations literature, for example, by a fellow named

Amir, who talks about the conditions under which inter-racial contact undercuts stereotyping.

THE COURT: Well, I see that every day. Some people believe everybody should be locked up and put in jail, until one of their family is arrested and then with respect to those people they want an exception. That is what you are talking about. That sort of people where they know the person. They understand what is behind the offense.

THE WITNESS: It also depends on whether they stop seeing it as an outgroup and start seeing it as somebody who can be like them.

THE COURT: Yes.

[612] BY MR. TALLENT:

Q Professor, you came to this particular endeavor after being contacted by the plaintiffs, I take it?

A Yes.

Q And the plaintiffs suggested to you that this might be an occasion where your expertise might be used to find some stereotyping, is that correct?

A Yes, that has been suggested to me before too and I have declined to participate.

Q After spending 20 or so hours investigating?

A Not after spending 20 but after spending some time investigating the facts and seeing whether in fact I felt that I could testify on such a case.

Q But you do not think that you engaged in any kind of selective effort here in order to reach the conclusions that you have given this Court?

A No, I don't believe that.

Q Did you review in connection with this—with your effort here any of the presentations or arguments or discussions put on on behalf of Price Waterhouse with respect to the behavior involved in the case?

A I reviewed the information that was available to the decision-makers.

Q All the information?

A Major information that was available to the [613] decision-makers, the long and short forms and the office visits and so on, I believe that I reviewed the balance of the information.

MR. TALLENT: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. HURON:

Q Dr. Fiske, at one point in your testimony on cross-examination you were asked some questions about comments on long and short forms and I think you got through some of the comments on long forms. You didn't really get into the short forms. I don't want you to go through all of them, but if we could have some flavor of the—what you found on the short forms, number one, and secondly whether if I—if I were to tell you to make the assumption that Miss Hopkins had been told that it was the short forms that had effectively blocked her candidacy when she was proposed, whether that would be consistent or inconsistent with your analysis.

MR. TALLENT: Your Honor, that is improper redirect and not subject to cross and I think it is a leading question to begin with.

THE COURT: Well, I think it is a proper inquiry. I would have thought it would have been on the direct examination so the other side could deal with it. If you are going to do that I will allow the defendant to come back and [614] take up the short forms one at a time and go through them because I don't think they ought to be mousetrapped by it but I think you should be allowed to fully bring out whatever you want and I say that particularly because I am afraid occasionally I have interrupted because of my interest in this testimony and sometimes diverted counsel from something you may have intended on one side or the other to ask but if you

pursue it I'll have to give counsel for Price Waterhouse another round on that issue.

MR. HURON: Yes, sir, I understand that.

BY MR. HURON:

Q What I'd like to do is talk a little bit about the short forms and your opinion as to their effect on the process.

A Well, to put it in a little bit of context it seems the comments on the short forms are made by people by definition who know her less well and for whom it is based on more episodic types of encounters, not such a long-term contact. That is how the forms are used in any case. They are also more likely to be based on reputation and hearsay, but the specific comments that come out of short forms, if I am understanding your question right, include many of the comments that I have already read.

The comments on the one hand that she was perceived to be overbearing and arrogant and self-centered and abrasive [615] were from people who were filling out short forms and the comments viewing the same behavior in different ways that she had the will to get things done and was independent and had the courage of her convictions are comments also from short forms.

Q Now, there was a fair amount of focus on these evaluations during your cross. Assuming all you had before you, Dr. Fiske, were these evaluations and that was the only indicator that you had of stereotyping, take the long and short form evaluations together, would that be sufficient for you to draw the conclusions you drew?

A Not simply all by itself.

Q What else did you have?

A Well, I drew the conclusion based on rather strong antecedent conditions, having somebody who was in an extreme minority condition, ambiguous criteria and ambiguous information and there seemed to me what I call several converging indicators which included the cate-

gorical things, trying to get her to do things in a more feminine fashion. Charm school. Needs more social grace to overcompensate for being a woman. Those are comments that talk about behavior in light of her gender, her sex specifically. The overly intense negativity and the divided opinion that resulted from that, those are all factors that—all indicators that as a group, you know, contribute to my conclusion about the case.

[616] Q Do you have before you plaintiff's Exhibit No. 17 which is the report of the office visit conducted with respect to Miss Hopkins' candidacy?

A Yes.

Q Could you turn—I think it is the fourth page in or the fifth, the comments of Mr. Epelbaum? You are asked about Mr. Epelbaum's comments on the long form. I am wondering if you could look at his comments that are attributed to him in the office visit.

A Those are the last comments—oh, yes.

Q What is the page reference?

A 3844. He is making some rather extreme statements here. For example, "Ann wants to win. I don't know where she would draw the line." That seems to me like a rather strong innuendo to me and I think it is an example of the kind of extreme statements that are indicative of an extreme stereotype situation.

Q Again, would those extreme statements by themselves be sufficient for you to draw the conclusion that stereotyping is going on?

A No, not one or two by themselves.

THE COURT: And you think it is stereotyped for this man who is a strong partner in the company to say that he himself couldn't have done the job she did? It strikes me that that actually suggests he is given to pretty strong [617] statements on all sides, but he tells his partners that he couldn't do what this woman did. That would impress some people about her, as being favorable.

THE WITNESS: There is this curious split between people's acknowledgment of her superior task performance and getting the job done and getting and retaining clients. I am not suggesting that that is stereotypic judgment, that people are judging her stereotypically when they evaluate her performance.

BY MR. HURON:

Q Are you saying as a general proposition it is more likely for stereotypes to occur when you are looking at personality rather than performance?

A I think that to the extent that that—I think that is true because personality judgments are much more ambiguous. Performance judgments, like the amount of money I bring in is a number. It is a much more—and it is based on much more discrete unambiguous kinds of things.

Q Dr. Fiske, you agree that every person has some balance of positive and negative traits?

A Certainly.

Q And let's assume for the moment that the plaintiff in this case is no different than anyone else in that regard, that she has negative as well as positive traits. What impact does stereotyping have on a person in that situation?

[618] A It has the impact that the person who is acting on the basis of the stereotype exaggerates the negative aspects of the person and tends to discount the positive aspects and in this particular case they are focusing on her personality in doing that.

THE COURT: You don't mean that. Now, think about that answer. You don't mean that. Because if a person fits the stereotype it is an advantage I thought you were saying. I thought you were saying if a person fits the stereotype it was an advantage. In other words, if—if a woman came up to partnership here who was quite feminine and physically attractive and more female and had the other qualities it would be an advantage,

wouldn't it, and she would fit the stereotype.

THE WITNESS: It is an extremely difficult line to walk.

THE COURT: Well, that is why I am pointing out to you it is a little difficult line to walk.

THE WITNESS: I think for a woman coming up for partner or a manager, a high level manager in an organization, it is an extremely difficult—

THE COURT: This place is full of women.

THE WITNESS: Well, in this particular instance rising to the top means being a partner and that seems to be a bright dividing line in this company, being a partner is—

[619] THE COURT: I don't know about that. It's full of prestige, I suppose.

THE WITNESS: Yes. Yes. What I am trying to suggest is that for women who want to—who aspire to the top of their organization, if they follow the route of being stereotypically feminine in their personality they run the risk of being perceived as incompetent so that the research suggests that people discount women's achievements if they can, they are more likely to be attributed, for example, to luck or getting a good break or the task was easy or something like that.

If the woman is incredibly competent—

THE COURT: You are saying a woman can't join a man's organization. There is no way.

THE WITNESS: Well, I am not saying there is no way.

THE COURT: Well, they are going to be the victim of stereotyping no matter what they do, is that what you are saying?

BY MR. HURON:

Q Is that true, Dr. Fiske?

A I am saying that there are two opposing types of tendencies to stereotype. One is a woman who fits—

THE COURT: But they face it either way no matter what.

[620] THE WITNESS: Yes, I just think it is a potential thing that one faces.

BY MR. HURON:

Q Is there something that an organization can do because obviously everybody in the organization is not a stereotyping person, is there something that somebody in the organization can try to do to put some restraints on this?

A It is clear that the organizational environment can discourage people from stereotyping by creating an incentive situation not to do that. To me the fact that there was no policy with regard to sex suggests that the organization was not making an effort to undercut sexual stereotyping. That Mr. Gervasi, who made the rather extreme comment about the women who were coming up, apparently people ignored him, but the fact that he was able to make that almost verbatim same comment two years running and nobody said to him, look that is really not an appropriate thing to say in this context, suggests to me that the organization is not discouraging people from stereotyping.

MR. HURON: I have nothing further.

THE COURT: And how many of them, if you went around, and said, now, I want to be sure you are not stereotyped, would you say well, I am. I am sorry. I changed my mind. How many does the research indicate that do that?

THE WITNESS: Well, the research indicates it is [621] hard to get people to stop doing that but incentives are really required. You can't really tell people not to do it.

RECROSS-EXAMINATION

BY MR. TALLENT:

Q Professor, what does research indicate that a stated policy that says do not discriminate on account of sex has on the use of stereo—the propensity of one to stereotype? Have you got research, numerical statistical research?

A The research indicates that instructing people not to stereotype is not in and of itself a sufficient condition for preventing them from stereotyping and I think that goes along with common sense as well. That other things are—additional things are required. However, it would seem to me that it is a minimal condition for discouraging stereotyping.

Q All right. Take another look, if you would, at Mr. Epelbaum's comments on the office visit report and since you have made an evaluation of him, which part of those comments do you believe indicate that Mr. Epelbaum is stereotyping Miss Hopkins?

A I have already stated that he is rather—his comment that she doesn't—he doesn't know where she would draw the line is a rather extreme comment to me.

Q The testimony is, I will represent to you, that these are notes that were transcribed by a third person after [622] an hour and a half lunch with Mr. Epelbaum and Mr. Epelbaum has testified both here and in his deposition that he doesn't ever remember saying that. Does that affect your view of Mr. Epelbaum?

MR. HURON: Objection. I think there is a conflict in the testimony and I think that that shouldn't be part of the question there.

THE COURT: If there was something in the testimony, I wasn't aware of it. It wasn't brought to his attention on the stand, but I don't have that in mind.

MR. HURON: Thank you.

BY MR. TALLENT:

Q Does that affect your view of Mr. Epelbaum and the tenor of these comments if that was a misperceived or—people are misperceived all the time. Those were misperceived impressions by this—

A Of course it would.

Q Is there anything else in there that you would view as stereotypical, counterstereotypical?

A Nothing that I wish to discuss.

MR. TALLENT: All right. Thank you.

MR. HURON: Nothing further, Your Honor.

THE COURT: All right, you are excused. Thank you.

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SUPREME COURT OF THE UNITED STATES

No. 87-1167

PRICE WATERHOUSE, PETITIONER

v.

ANN B. HOPKINS

ORDER ALLOWING CERTIORARI

Filed March 7, 1988

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. Justice Stevens took no part in the consideration or decision of this petition.